Supreme Court, U.S.
FILED
NOV 09 2006
OFFICE OF THE CLERK

NO. 06-913

IN THE SUPREME COURT OF THE UNITED STATES

DONNA ADAMS – HEDRICK,

Petitioner,

ROBERT HEDRICK,

Petitioner,

v.

LIBERTY MUTUAL INSURANCE COMPANY,

Respondent

On Petition for Writ of Certiorari to
The United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

DONNA ADAMS-HEDRICK, Pro *Se*
16718 Bougainvilla Lane
Friendswood, TX 77456
Tel: (281)648-1784

ROBERT HEDRICK, *Pro Se*
16718 Bougainvilla Lane
Friendswood, TX 77456
Tel: (281)648-1784

QUESTIONS PRESENTED

1. Did the Texas State Court, the United States District Court and the 5th Circuit Court of Appeals violate the due process rights of a disabled person (Donna Adams Hedrick) by failing to recognize the status of Robert Hedrick to represent her under properly executed power of attorney, as her next best friend or as her guardian or in lieu of this appoint a guardian ad litem to represent her interests prior to having any hearings and issuing any orders in the respective cases?

2. Does the administrative rules of the Texas Workers' Compensation Act, Title 5, Subtitle A, Section 410.006 which allows non-attorney representation before administrative hearings and Texas Government Code, Chapter 81 which prohibits non-attorney representation in state and federal courts (that are a part of the appeals process for the administrative hearing) create a common practice which violates the constitutional guarantees of due process and fair trial for disabled persons and in specific Donna Adams Hedrick by denying that person of the representative who was most knowledgeable of the facts of the case for an attorney who may not know as much as the original representative giving prejudicial and unfair advantage to the insurance company?

3. Did the United States District Court and the 5th Circuit Court of Appeals judges act outside of their mandate as administers of justice and react as ministers of justice by issuing sanctions and costs against Hedrick's as a method to "silence" the attempts to challenge state laws and non-attorney representation?

4. Did the 5th Circuit Court of Appeals err in dismissing the case without first dealing with the constitutional issues or due process, representation, and protection of fair and equal access to the courts by a disabled person?

5. Did the 5th Circuit Court of Appeals and the district court unfairly issue sanctions and costs against Hedrick's?

TABLE OF CONTENTS

QUESTIONS PRESENTED.....i

TABLE OF AUTHORITIES CITED.....iii, iv

OPINONS BELOW.....2

JURISDICTION..... 2

CONSTITUTIONAL PROVISIONS INVOLVED.....6

STATEMENT OF THE CASE.....6

REASONS FOR GRANTING PETITION.....8

CONCLUSION..... 28

TABLE OF AUTHORITIES CITED

CASES **PAGE NUMBER**

Liberty Mutual Insurance Company v. Donna Adams, No. 25628-1 (239th Dist. Ct. Texas) 1,3,28

Liberty Mutual Insurance Company v. Donna Adams, No. 25628 (239th Dist. Ct. Texas). 3,10,15,21,27

Fouke v. Mandel (1974, DC Md) 386 F Supp 1341.

Spector Motor service, Inc. v. Mclaughlin (1944) 323 US 101, 89 L. Ed 101, 65 S Ct 152 on remand (DC Conn) 88 F Supp 711, revd on other grounds (CA2 Conn) 181 F 2d 150, revd on other grounds 340 US 602, 95 L Ed 573, 71 S Ct 508 (ovrd on other grounds 5

Complete Auto Transit, Inc. v. Brady 430 US 274, 51 L Ed 2d 326, 97 S Ct 1076, reh den 430 US 976, 52 L Ed 2d 371, 97 S Ct 1669 5

Wisconsin v Constantineau (1971) 400 US 433, 27 L Ed 2d 515, 91 S Ct 507. 5

BT Invest. Managers, Inc. v Lewis (1977, CA5 Fla) 559 F2 950. 5

House v. Mayo (1945) 324 US 42, 89 L Ed 739, 65 S Ct 517, reh den 324 US 886, 89 L Ed 1435, 65 S Ct 681. 5

TWCC Case No. 00071055-01 8, 10

TWCC Case No. X2153405-01 8, 10

Liberty Mutual Insurance Company v. Donna Adams, H-05-1974, (S.D. Tx.) 13,15,16,17,21,22

Liberty Mutual Insurance Company v. Donna Adams, 05-20816 (5th Cir.) 15

Louisville & Nashville R. Co. v. Mottley, 211 U.S. 149, 150-53 (1908) 19

Sitton v. United States, 413 /f.2d 1386, 1389 (1969) 19

Dawson v. Garcia, 666 S.W.2d. 254, 265 (Tex. App. – Dallas 1984, no writ) 20

Smith v. Smith, 720 S.W.2d. 586, 591 (Tex. App. – Houston [1st Dist.] 1986, no writ. 20

Hedrick et al v. Texas Workers' Compensation Commission, H-01-3416 (S.D. Tx) 21

TABLE OF AUTHORITIES CITED (Continued)

Popovich v. Cuyahoga County Court of Common Pleas, 276 F. 3d 808 (6th Cir. 2002) (en banc), cert. denied, 2002 WL 704377, No. 01-1503 (October 7, 2002)	22,23
Faretta v. California, 422 U.S. 806, 819 n. 15 (1975).	23
Helminski v. Ayerst Labs, 766 F.2d 208, 213 (6th Cir.), cert. denied, 474 U.S. 981 (1985)	23
Groppi v. Leslie, 404 U.S. 496, 502 (1972)	23
Romer v. Evans, 517 U.S. 620, 134 L. Ed. 2d 855, 866	23
Nolan v. Department of Public Welfare, 673 A. 2d. 414 (Pa. 1995)	23
Cleveland Bar Association v. Comp Management, Inc., 104 Ohio St. Ed 168, 2004– Ohio–6506	24

STATUTES AND RULES

FED. R. CIV. P. 11(c)	18
FED. R. CIV. P. 17 (c)	16,17,18
Title 28 U.S.C. § 1254(1).	2
Title 28 USC § 1331	4
Title 28 USC 1651 [a]	5
Americans With Disability Act	23
TX. R. CIV. P. 173	20
TX. R. CIV. P. 173.3	20
Texas Workers' Compensation Act, Title 5, Subtitle A, Section 410.006	9,27
The Texas Workers' Compensation Act § 410.301	9
Texas Health & Safety Code § 166.152, 166.164	9
Texas Probate Code Chapter 12 § 490	9
Texas Government Code, Chapter 81	15, 27

CONSTITUTION OF THE UNITED STATES

Sixth Amendment	23
Fourteenth Amendment	7

PETITION FOR A WRIT OF CERTIORARI

Petitioners, Donna Adams-Hedrick and Robert Hedrick, respectfully petitions for a writ of certiorari to review the judgments of the Fifth Circuit, the United States District Court and the Texas State Court. This case is complicated in that there were two (2) separate injuries involved.

For the first injury the Texas Workers' Compensation Commission made a ruling on which an appeal to the state court **could** be taken.

For the second injury the Texas Workers' Compensation Commission **made no ruling that** would allow LIBERTY MUTUAL INSURANCE COMPANY to take an appeal to the state court. The only statement made by the Texas Workers' Compensation Commission was that LIBERTY MUTUAL INSURANCE COMPANY **was not relieved of liability for the second injury**.

Accordingly, the damages for the second injury, including life long lose of wages, can only be awarded by the United States District Court where original jurisdiction for the second injury lies. The United States District Court and the 5th Circuit Court of Appeals failed to recognize this fact. The second injury was the subject of the removal to federal court in **Liberty Mutual Insurance Company v. Donna Adams**, No. 25628-1 (239th Dist. Ct. Texas). The district court and the court of appeals erred in their judgments.

The case is further complicated by the fact that the state, federal district court and federal appeals court erred in not first dealing with proper representation for Donna Adams Hedrick (a disabled person) before making decisions in the case; despite the pleas and begging of both Donna Adams Hedrick and Robert Hedrick to do so. In failing to first deal with proper representation by making a clear and precise statement of the status of Hedrick under properly executed power of attorney or appointing a

guardian ad litem; the court denied due process to Donna Adams Hedrick (a disabled person).

Petitioners believe that the court was "blinded" by the desire to protect the "status quo" of the attorney/court relationship and acted outside of the courts mandate to attempt to intimidate the Hedrick's by issuing sanctions and threats to stop their attempts to protect the constitutional rights of Donna Adams Hedrick to a fair and equal hearing with the representation of her choice or to appoint a court appointed representative for her as an incompetent person (a fact that has not been contested by either the court or the parties of the case).

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at **APPENDIX A.**

The order of the United States District Court appears at **APPENDIX B.**

The order of the United States District Court appears at **APPENDIX C.**

Transcript of Proceedings - Kenneth Hoyt on July 25, 2005 appears at **APPENDIX D.**

Recusal Order of Kenneth M. Hoyt on November 16, 2006 appears at **APPENDIX E.**

The order of the Texas 239th Judicial District Court appears at **APPENDIX F.**

JURISDICTION

Donna Adams Hedrick and Robert Hedrick are invoking the Supremacy Clause of the United States Constitution and invoke the Court's original jurisdiction under Article III of the Constitution of the United States. The judgment of the court of appeals was entered on September 15, 2006. The jurisdiction of this Court is also invoked under 28 U.S.C. § 1254(1).

Petitioners are challenging the actions, lack of action and orders of the 5th Circuit Court of Appeals, the United States District Court and the 239th Judicial District Court of Texas as being "unconstitutional" in that all of these orders were issued prior to any attempts to protect the rights of a disabled person to due process and equal access to the courts. The United States Supreme Court has jurisdiction to remedy these errors.

Petitioners are challenging the actions and order's of the judges at the federal level as "outside of both their mandate and their discretionary powers"; in that the removed case **Liberty Mutual Insurance Company v. Donna Adams**, No. 25628-1 (239th Dist. Ct. Texas) constitutes an separate injury and issues not related to case **Mutual Insurance Company v. Donna Adams**, No. 25628 (239th Dist. Ct. Texas).

The circumstances surrounding **Liberty Mutual Insurance Company v. Donna Adams**, No. 25628-1 (239th Dist. Ct. Texas) **were not appealable** by LIBERTY MUTUAL INSURANCE COMPANY from the state administrative hearing to the state court.

The August 17, 2000 injury and issues contained in **Liberty Mutual Insurance Company v. Donna Adams**, No. 25628-1 (239th Dist. Ct. Texas; separated by the 239th Judicial District Court on Jan. 26, 2004) from **Mutual Insurance Company v. Donna Adams**, No. 25628 (239th Dist. Ct. Texas) should have been filed separately in the United States District Court under it's original jurisdiction.

The removal of these "separated" issues and injury to the district court by the Hedrick's constituted, in fact, an original filing and was not in any way associated with the issues in **Mutual Insurance Company v. Donna Adams**, No. 25628 (239th Dist. Ct. Texas) since they originate from different circumstances. Therefore, all orders issued by both the District Court and 5th Circuit Court of Appeals are a violation of constitutional rights to due process.

Petitioners are challenging Texas state statutes and administrative rules that create a **"common practice"** which has caused prejudicial and detrimental treatment of millions of disabled persons by the judicial systems at both the state and federal levels denying these disabled persons their due process rights and to equal access to the courts based upon their mental, physical, and financial disabilities.

This **"common practice"** creates an inequitable position giving **"insurance companies"** and their **"corporate partners"** overwhelming and distinct advantages on appeals into the judicial system from the decisions of state administrative hearings. These advantages allow **"insurance"** companies to gain an "unfair" advantage to win law suits at the expense of the disabled person who is without resources to hire an attorney to represent them and who cannot, as prohibited by law, continue with their non-attorney representative, from the administrative hearing, as their representative to the end of the appeals process. Even though, this non-attorney may have won for them at the administrative hearing and is the most knowledgeable person on their injury and case.

A challenge to state law under the supremacy clause of the Federal Constitution is a federal question case within District Court Jurisdiction under 28 USC § 1331[1] The United States District Court and the 5th Circuit Court of Appeals ruled outside of their mandate and refused to hear any of these questions. The Supreme Court of the United States is the only court with the jurisdiction to remedy these errors.

The state of Texas laws regarding non-attorney representation in courts and the statutes regarding the allowed representation of non-attorney's in administrative hearings before the Texas Workers' Compensation Commission is not ambiguous, therefore, the district court, the court of appeals and the United States Supreme Court cannot abstain from deciding the constitutionality of this **"common practice"** set up by the State of

---

[1] Fouke v. Mandel (1974, DC Md) 386 F Supp 1341.

Texas combining administrative hearing rules and state laws that harm disabled persons.[2]

Where there is no ambiguity in state law, the federal court should not abstain but should proceed to decide the federal constitution claim.[3] This remains true even if the state statute could be challenged in state court under a state constitutional provision essentially identical to the federal constitutional provision.[4]

Determination of the constitutionality of the Texas laws and statutes and the resulting court orders being challenged herein remains under the original jurisdiction of the United States Supreme Court to decide.

The Supreme Court has jurisdiction to review state court decisions in which the validity of a state statute is drawn into question on the ground of its being repugnant to the Constitution, treaties or laws of the United States.[5]

Petitioners invoke the powers of the United States Supreme Court pursuant to the All Writs Statute (28 USC 1651 [a]) to request that the United States Supreme Court issue all writs necessary or appropriate in aid of its jurisdiction and agreeable to the principles of law and request that the United State Supreme Court review any and all issues presented by the case including but not limited to removal of the entire case to the United States Supreme Court.[6] The United States Supreme Court has original jurisdiction over this case.

---

[2] *See* **Spector Motor service, Inc. v. Mclaughlin**(1944) 323 US 101, 89 L. Ed 101, 65 S Ct 152 on remand (DC Conn) 88 F Supp 711, revd on other grounds (CA2 Conn) 181 F 2d 150, revd on other grounds 340 US 602, 95 L Ed 573, 71 S Ct 508 (ovrd on other grounds **Complete Auto Transit, Inc. v. Brady** 430 US 274, 51 L Ed 2d 326, 97 S Ct 1076, reh den 430 US 976, 52 L Ed 2d 371, 97 S Ct 1669

[3] **Wisconsin v Constantineau** (1971) 400 US 433, 27 L Ed 2d 515, 91 S Ct 507.

[4] **BT Invest. Managers, Inc. v Lewis** (1977, CA5 Fla) 559 F2 950.

[5] 28 USC §§ 1257 (2), 1257 (3).

[6] **House v. Mayo** (1945) 324 US 42, 89 L Ed 739, 65 S Ct 517, reh den 324 US 886, 89 L Ed 1435, 65 S Ct 681.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in relevant part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive a person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner, Donna Adams-Hedrick, as a disabled person, had all expectations that her rights to equal access to the courts would be protected at both the State and the Federal levels under the provisions of the United States Constitution.

Petitioner was soon to find that this was not the case at either the State or the Federal level and this case is now presented to the Supreme Court of the United States to determine if her rights were violated.

This is a case in which Petitioner suffered two (2) separate injuries while on-the-job. One injury sustained on March 29, 2000 and the second injury on August 19, 2000.

As a result of these combined injuries Donna Adams Hedrick is disabled to a condition that it is life threatening for her to attend any hearings or subject herself to "smells", heat or stress without risking death. Her mental capacity prevents her from representing herself. Both the State and Federal Courts were advised of this condition. Accordingly, a properly executed power of attorney (under the laws of the State of Texas) was grant to Robert Hedrick (spouse) to represent her (as if her were her) in all legal matters.

Both injuries were timely reported to the Texas Workers Compensation Commission (hereinafter referred to as TWCC). The TWCC ruled in favor of Donna Adams for the injury on

March 29, 2000 making this decision subject to appeal to State court. The Texas Workers Compensation Commission made no ruling on the injury of August 19, 2000 that would allow it to be appealed to State court. However, the TWCC did not relieve the insurance carrier of responsibility for the second injury.

The carrier inappropriately tried to combine the second injury to the first injury in its appeal. Petitions allege that original jurisdiction for the August 19, 2000 lies in the Federal courts and may be tried at the same time in Federal Court as the March 29, 2000 injury is tried in State court.

Petitioners have removed the August 19, 2000 injury to Federal court. It is from the decisions of the district and appeals court that Petitioners now petition the Supreme Court of the United States.

Petitioners believe that the rights of Donna Adams-Hedrick (a disabled person), under the Fourteenth Amendment, have been violated by a "common practice" within the State of Texas which allows non-attorney representation before administrative hearings yet prohibits that same non-attorney to continue to the end of the appeals procedures which goes into State or even Federal Court; giving unfair advantages to the insurance carrier who has unlimited resources while the "disabled person" has little or none.

Petitioners requested that the courts at both the State and Federal levels to recognize the "status" of Robert Hedrick to represent his "disabled" and "incompetent" wife under properly executed power of attorney, as spouse or as next best friend or, in lieu of this, to appoint a Guardian ad Litem to protect her interests.

The courts at both the State and Federal Level not only failed to do this; but instead, chastised and sanctioned, both Donna Adams-Hedrick and Robert Hedrick for seeking to have the court protect the rights of Donna Adams Hedrick to a fair and equal trial and to the representation of her choice. Neither the State nor the Federal courts have ruled that the power of attorney granted to Robert Hedrick, out of medical necessity, is an invalid instrument.

It is with this background that this case is brought to the Supreme Court of the United States for review.

REASONS FOR GRANTING PETITION

Donna Adams Hedrick sustained an injury caused by exposure to formaldehyde, toxic epoxy resins, airborne resin and formaldehyde laden dust, on the job, on March 29, 2000 **(00071055-01)** to which the Texas Workers' Compensation Commission ruled **(APPENDIX G, page 31a & 32a)** that:

> **"Claimant had disability from March 30th, 2000 through April 20, 2000 and again from August 19, 2000 to date of this hearing....Claimant is entitled to temporary income benefits for all periods of disability through the date of maximum medical improvement."**
>
> **"Carrier is ordered to pay medical and income benefits in accordance with this decision, the Texas Workers' Compensation Act and the Commission's Rules."**

Donna Adams Hedrick has not been determined to have reached **"maximum medical improvement"** yet Liberty Mutual Insurance Company has stopped all payments for medical expense and income benefits causing damages to Donna Adams Hedrick in excess of $100,000.

Donna Adams Hedrick sustained an injury, on the job, on August 17, 2000 **(X2153405-01)** to which the Texas Workers' Compensation Commission ruled **(APPENDIX G, page 31a)** that:

> **"Claimant did not sustain a compensable injury on August 17, 2000, and therefore did not have disability resulting from the claimed injury. Carrier is not relieved of liability for the claimed injury of August 17, 2000, because it was timely reported."**
>
> **"Carrier is not liable for benefits and it is so ordered."**

Donna Adams Hedrick has sustained "lifetime" damages in excess of one (1) million dollars as a result of this the August 17, 2000 injury.

The Texas Workers' Compensation Act, Title 5, Subtitle A, Section 410.006 states that:

> **"(a) A claimant may be represented at a benefit review conference, a contested hearing, or arbitration by an attorney or may be assisted by an individual of the claimant's choice who does not work fro an attorney or receive a fee. An employee of an attorney may represent a claimant if that employee: (1) is a relative of the claimant; and (2) does not receive a fee."**

Robert Hedrick successfully represented his wife before the Texas Workers' Compensation Commission, presented evidence, and examined witnesses resulting in a favorable ruling in favor of Donna Adams Hedrick.

Robert Hedrick has received no compensation or re-imbursement of any costs or fees for any actions taken by him on behalf of Donna Adams Hedrick as authorized under properly executed power of attorney under the Texas Health & Safety Code § 166.152, 166.164 and the Texas Probate Code Chapter 12 § 490. Neither the state court nor the federal court has ruled that the Durable Power of Attorney, properly executed under the Texas Health & Safety Code § 166.152, 166.164 and the Texas Probate Code Chapter 12 § 490 by Donna Gail Adams (Hedrick) on October 2, 2000 **(APPENDIX H)** granting Robert Hedrick power of attorney to represent Donna Adams (Hedrick) in all legal, business and health matters (as if he were her) is an invalid or illegal document.

The Texas Workers' Compensation Act § 410.301 states that:

> **"(a) Judicial review of a final decision of the appeals panel regarding compensability or eligibility for or the amount of income or death benefits shall be conducted as provided by this chapter. (b) A determination of**

benefits before a court shall be in accordance with this subtitle."

The only reviewable ruling of the Texas Workers' Compensation Commission to which Liberty Mutual Insurance Company may take to the court is the ruling on the injury sustained on March 29, 2000 **(00071055-01)** which ruled in favor of Donna Adams Hedrick. This was done by Liberty Mutual Insurance Company in **Liberty Mutual Insurance Company v. Donna Adams**, No. 25628 (239th Dist. Ct. Texas) after the appeals panel failed to issue any ruling on the appeal.

There is no ruling issued by the Texas Workers' Compensation Commission surrounding the injury of August 17, 2000 **(X2153405-01)** from which Liberty Mutual Insurance Company may appeal to the state court. The United States District Court has original jurisdiction over this injury and the damages surrounding this injury separate from the injury sustained on March 29, 2000. Donna Adams Hedrick has a due process right to invoke the federal district courts "original jurisdiction" and separate the issues surrounding the August 17, 2000 injury from the injury of March 29, 2000. The federal district court and the 5th circuit court of appeals has denied Donna Adams Hedrick her due process rights to do this by failing to issue an order separating this injury from the one on March 29, 2000 under it's original jurisdiction. Liberty Mutual Insurance Company has fraudulently attempted to include it into the same suit as the March 29, 2000 injury to attempt to prevent separate suit by Donna Adams Hedrick for the second injury.

Petitioners allege that the United States District Court acted "outside of it's mandate" by remanding the case back to the state court and issuing sanctions and costs in an "deliberate attempt" to protect the status quo of attorneys without first "dealing with" the legality of the "power of attorney", status of Robert Hedrick to represent his "disabled spouse" either under the power or attorney or as next best friend or in lieu of this "appointing a guardian ad litem" to represent her best interests as provided by federal

statutes.[7] The 5th Circuit Court of Appeals failed to hear on any of the issues by dismissing the case outright.

The District Court and the 5th Circuit Court of Appeals failed to issue an order to the state court to protect her interests to due process and equal access to the courts. Instead, petitioners allege that the court was **"blinded"** by the thought of **"having to deal with the issue of representation in appeals from administrative hearings that could affect the status quo of attorneys"** and sought **"instead"** to "silence" Robert Hedrick by intimidation, sanctions and threats of criminal punishment to avoid dealing with the "constitutional issues' surrounding the case.

This **"blind justice"** is very clearly reflected in the statements and actions of the Honorable Judge Kenneth Hoyt in the hearing conducted (without regard to representation for Donna Adams) on July 25, 2005 **(Appendix D):**

MS. MARKANTONIS: Yes, Your Honor, I noticed that too. And for the record, I don't have any objection to hold the hearings with Adams and Hedrick by phone on their part.

THE COURT: I have a problem with that. I need to look at the man who's filing these proceedings and practicing law without a license, and I'm concerned about that, and these things have a way of developing into things that are way beyond what we would like to see happening at the courthouse because, generally, the frustration and anger turns away from Liberty Mutual and then toward the Courts. And when it does that, it does concern me. If she's able to go to work, leave the house, she's certainly able to come to the courthouse. So, what do you want? What action do you want?

MS. MARKANTONIS: Well, Your Honor, I'd like to have the case remanded back to state court, and I'd like to have sanctions entered against Adams and Hedrick from filing anything further in federal court unless a federal court judge inspects their pleadings. And if they're found to be not frivolous, then they can

---

[7] FRCP 17 (c).

proceed with the action. But if they're frivolous, I'd like for them all to be dismissed immediately without having to have my clients defend them.

THE COURT: What case or cases are pending at this point? Is it just the case pending here or are there other cases pending in our federal court system?

MS. MARKANTONIS: There is a case against Judge Sebesta.

THE COURT: That's pending in the federal courts?

MS. MARKANTONIS: Yes, Your Honor. And the state attorney general – Attorney General's Office has filed a motion to dismiss that case.

THE COURT: Do you know who that's pending before?

MS. MARKANTONIS: No, Your Honor. But –

THE COURT: It's no problem. I didn't know if you were involved in that in some respect.

MS. MARKANTONIS: No, I'm not. I do know the case number is 2100, I believe.

THE COURT: 2100?

MS. MARKANTONIS: Yes, Your Honor.

THE COURT: Is that an '05 number?

MS. MARKANTONIS: Yes, Your Honor.

THE COURT: 05-2100. Where is that, Myra, if you can see it for us.

THE CASE MANAGER: That's actually pending before Judge Johnson, Nancy Johnson.

THE COURT: How did it get there, transfer from one of the ---she's working for who? Who is she a magistrate for, Judge Lake and who else? And Rainey?

THE CASE MANAGER: There was an order referring it from Judge Lake.

THE COURT: Okay. So, it's Sim Lake's case. Okay. All right. I can't think of anything else that we can ask or do. So, I will review your documents and , in essential, grant the motions that you've requested.

MS. MARKANTONIS: Thank you , Your Honor.

THE COURT: All right? All right. Thank you very much.

MS. MARKANTONIS: Thank you.

hearing. On November 16, 2006 Judge Kenneth M. Hoyt recused himself from the case. **(Appendix E).**

Transcript of the hearing on July 25, 2005 indicates that the subjects discussed and covered at the hearing are not consistent with the judges' rulings and sanctions against Donna Adams and Robert Hedrick that the suit was **frivolous**.

This **was not discussed** in the hearing nor were the constitutional issues discussed or any attempts made to protect the representation rights of Donna Adams. Despite the pleas and begging by both Donna Adams and Robert Hedrick to recognize some sort of status or appoint a guardian ad litem. Judge Kenneth M. Hoyt, in his own words, acknowledges that no attempt was made prior to half way thru the hearing to contact the Hedrick's regarding telephone appearance **(Appendix D)**:

"THE COURT: All right I think I need to correct the record. Our staff – or my office did not contact him."

Instead, the hearing was more about punishing Robert Hedrick and protecting the "status quo" of the attorney/court relationship than on justice and fair trial for Donna Adams Hedrick.

Petitioners allege that not only were the actions of Judge Kenneth M. Hoyt outside of his mandate and solely to protect the status quo of the attorney/court relationship; but that his inquiry into case number 05-2100 was outside of his discretionary powers and **raises the question as to whether his intentions were to unduly influence decisions it case number 05-2100 via "exparte" discussions with either Judge Johnson or Judge Lake.**

Acting in a ministerial capacity Judge Kenneth M. Hoyt decided to ignore medical statements from the primary care physician of Donna Adams Hedrick (Dr. Sphuler) that she cannot attend hearings without life threatening risks to **"go after Robert Hedrick"** and to issue sanctions to **"scare the Hedrick's off".**

The courts attempt with the aid of Liberty Mutual Insurance Company to **"to paint a picture of threats by the Hedrick's towards Judge Sebesta"** is not only incorrect, but borders on **"slander"**. Judge Sebesta was taken to court because he failed to rule on representation and to enforce Texas State Statutes that require the court to appoint a guardian ad litem in cases of incapacitated persons prior to issuing orders in the case at the state level. It now appears from the transcript that Judge Kenneth M. Hoyt may have unduly influenced the decisions in that case.

The Hedrick's have a high regard and respect for Judge Sebesta because, in a previous court action in his court Judge Sebesta protected the daughter of Robert Hedrick from the sexual and mental abuse of Mr. Hedrick's ex-wife and transferred custody of her to Robert Hedrick.

In fact, regardless of the court actions taken against Judge Sebesta by Hedrick's, he is their preferred judge to hear the case in state court; because of his "normal fairness" and "reputation". Judge Sebesta simply made a mistake in not protecting the rights of Donna Adams Hedrick and it is their contention, herein, that he is not the only judge to do so.

In addition, Judge Kenneth M. Hoyt violated the due process rights of Donna Hedrick by continuing with the hearing, without ruling on representation of Hedrick under power of attorney, next best friend, or spouse, without attempting to protect her rights to access to the court via telephone and without ruling on appointment of a guardian ad litem. In his on admission; he admits that no attempts were made by his staff prior to the date of the hearing to arrange phone contact for the Hedrick's or to hold a hearing in the physical status of Donna Adams Hedrick to attend court hearings. Issuance of a continuance for one (1) week seems to be a small price to pay to protect the rights of representation. The court did not do this.

Based upon these facts alone, the Supreme Court should grant this Petition for Writ of Certiorari.

Donna Adams Hedrick is within her constitutional rights to file **"separate"** suit for the injury on August 17, 2000 to which Liberty Mutual Insurance Company **was not relived of "liability"** for by the Texas Workers' Compensation Commission.

The issues and circumstances surrounding the August 17, 2000 injury were **"inappropriately"** filed and included by Liberty Mutual Insurance Company in **Liberty Mutual Insurance Company v. Donna Adams**, No. 25628 (239th Dist. Ct. Texas).

They were then **"inappropriately"** severed and abated by the state court. Then they were **"appropriately"** REMOVED by Donna Adams Hedrick to the District Court for the Southern District of Texas in **Liberty Mutual Insurance Company v. Donna Adams,** H-05-1974, (S.D. Tx.) to invoke the courts **"separate and original jurisdiction"** over the second injury to which the Texas Workers' Compensation Commission made no decision other than putting Liberty Mutual Insurance Company on notice that they were not **"relieved of liability** for this injury.

When the District Court failed to recognize this as a separate **"original case"** the Petitioners appealed to the 5th Circuit Court of Appeals *in re* **Liberty Mutual Insurance Company v. Donna Adams,** 05-20816 (5th Cir.) in an attempt to invoke original jurisdiction.

Texas Government Code, Chapter 81 prohibits non-attorneys from representing persons in court actions; yet non-attorneys' may represent persons in administrative hearings where the appeal from that hearing goes into court.

This is a case where the Petitioner, Donna Adams-Hedrick is a disabled person who is physically and mentally unable to represent herself in court proceedings without jeopardizing her health and in fact would risk possible death by attempting to attend court hearings or defend herself. This is a case where the state

court, the trial court and the appeals court were all placed on notice of the life threatening nature of Petitioners health condition.

On May 4, 2005 **(APPENDIX I)** the United States District Court, Houston Division was notified by Wanda P. Sphuler, primary medical provider to Donna Adams Hedrick that:

> **"I am the primary medical provider for Donna Adams (Hedrick). It is my understanding that there will be a series of court hearings held in the United States District Court at which Donna Adams (Hedrick) will be required to attend.**
>
> **Donna's medical condition is such that a serious asthma attack can be "triggered" by her being exposed to perfumes, after shave lotions, candle fragrances, excessive hear and stifling conditions.**
>
> **I do not recommend Donna be present at any hearings or meeting to be held in the confines of offices or judges chambers or any location that is not large enough for her to be able to isolate herself from the above items that could trigger a serious asthma attack. Her having to attend hearings in such a place can be very detrimental to her health condition and could result in a serious asthma attack."**

On June 6, 2005 the United States District Court was requested by Petitioners **(APPENDIX J)** *in re* **Liberty Mutual Insurance Company v. Donna Adams,** H-05-1974, and (S.D. Tx.) to either recognize the "next best friend status" of Robert Hedrick or recognize Robert Hedrick's standing under power of attorney or to appoint a Guardian Ad Litem for Donna Adams Hedrick.

Federal Rules of Civil Procedure 17 (c) states that:

"Whenever...an incompetent person has a representative, such as a general guardian, committee, or conservator, or other like fiduciary, the representative may sue or defend on behalf of the ...incompetent person."

On July 20, 2005 the United States District Court *in re:* **Liberty Mutual Insurance Company v. Donna Adams,** H-05-1974, (S.D. Tx.) **(APPENDIX K)** was notified by Wanda P. Sphuler, primary medical provider to Donna Adams Hedrick, that:

> **"I am the primary medical provider for Donna Adams (Hedrick). It is my understanding that there will be a series of hearing held in the United States District Court including one scheduled for 7-25-05 at 11:00 a.m. at which Donna Adams (Hedrick) will be required to attend.**
>
> **Donna's medical condition is such that a serious asthma attack can be "triggered" by her being exposed to perfumes, after shave lotions, candle fragrances, excessive heat and stifling conditions.**
>
> **I do not recommend Donna to be present at any hearings or meetings to be held in conditions where any of these threats may be present. She would need to be able to isolate herself from exposure to these things. I would recommend that if possible her participation be done by telephone or other remote means. Attending any hearings where she could be exposed to any of the items listed above could trigger an asthma attack would be very detrimental to her health condition and could result in a serious asthma attack."**

The federal district court **"failed"** to rule on the status of Robert Hedrick as this **"representative"** under FRCP 17(c) prior to making ruling in the case in violation of the Constitutionally guarantees of Donna Adams Hedrick, a disabled and incompetent person.

Federal Rules of Civil Procedure 17 (c) does not grant but **"mandates"** that the court:

"...shall appoint a guardian ad litem for ...an (sic)...incompetent person not otherwise represented in an

action or shall make such other order as it deems proper for the protection of....an (sic) incompetent person."

Failing to issue any ruling on the status of Robert Hedrick under properly executed power of attorney and as the guardian, fiduciary, and representative of Donna Adams Hedrick; the Court had a **"mandate"** to appoint a guardian ad litem to protect the interests of Donna Adams Hedrick as an incompetent person.

The district judge acted **"outside of this mandate"** and failed to do so prior to making rulings in the case affecting the due process rights of Donna Adams Hedrick. In addition, he failed to recognize and issue **"...such other order..."** required under FRCP 11(c) directed to the state court to protect the constitutionally guaranteed rights of Donna Adams Hedrick at the state court level.

Petitioners believe this was done to avoid disturbing the **"status quo"** of attorneys appealing from state administrative hearings. The result is an **"unequal"** and "**prejudicial**" treatment of disabled persons who cannot afford an attorney. If they do find an attorney he is not knowledgeable of the case that was presented at the administrative level. This is prejudicial against the disabled person.

This failure of the judicial system has created a **"common practice"** that is **repugnant** to the due process rights guaranteed by the Constitution of the United States and to the intentions of the **"founding fathers"** that all citizens be afforded **"fair and equal"** access to all branches of the federal government.

This **"common practice"** of allowing "non-attorney's" to represent persons, and in specific disabled persons, before state administrative hearings; yet prohibits that **"now most knowledgeable"** person from continuing the appeal, should the disabled person so desire; denies **ALL DISABLED PERSONS** of their individual rights to a **"choice"** of representation and to have the most knowledgeable person represent them in the appeals process from the administrative hearing.

The incompetent status of Donna Adams Hedrick has not been challenged at either the State or federal level.

To protect the due process rights of Donna Adams Hedrick the trial court was **"mandated"** to recognize the status of Robert Hedrick to represent her; or declare the power of attorney as invalid; or appoint a guardian ad litem prior to making any rulings in the cases. The trial judge did not do that; but instead, dismissed the case **"without due process"** and without any effort to protect the rights of a disabled person. Seeking to protect these rights the orders of the trial court were appealed to the 5th Circuit.

The 5th Circuit Court of Appeals, in turn, failed to protect these rights.

The 5th Circuit Court of appeals failed to recognize that there were two separate injuries with the August 17, 2000 injury falling under federal court jurisdiction and not state court jurisdiction. Since the Hedrick's control original suit as plaintiff in this injury **Louisville & Nashville R. Co. v. Mottley**, 211 U.S. 149, 150-53 (1908) does not apply.

In the same fashion, **Sitton v. United States**, 413 F.2d 1386, 1389 (5th Cir. 1969) does not apply since the second injury is, in fact, a injury not subject to being appealed from the Texas Workers' Compensation Commission.

Technically, there was no removal of the August 17, 2000 injury and the damages associated with that injury, since the proper method of taking that injury to the federal court would have been by separate suit. However, the attempts by LIBERTY MUTUAL INSURANCE COMPANY TO **"attach this injury"** to the March 29, 2000 injury entangled the August 17, 2000 injury in the state court; leaving no alternative for the Hedrick's but to attempt to remove it from the state court case.

If this premise is correct; then all orders of the 5th Circuit Court of Appeals and the United States District Court should be reversed and the injury and damages, including lifetime lose of wages, should be set for trial in the federal court.

The 5th Circuit Court of Appeals erred in dismissing the case and should have let the appeal stand. It did not.

At the state level Texas Rules of Civil Procedure (TRPC) section 173.3 under procedure for appointment of guardian ad litem:

"(a) Motion permitted but not required. The Court may appoint a guardian ad litem on the motion of any party or on its own initiative."

TRCP 173 requires that in civil litigation, a guardian ad litem must be appointed by the court as a **"personal representative"** of an incapacitated person to protect the interests of that person in any lawsuit where that person is a party. **Dawson v. Garcia**, 666 S.W.2d. 254, 265 (Tex. App. – Dallas 1984, no writ). The trail court can appoint a guardian ad litem under TRCP 173 on its own motion. **Smith v. Smith**, 720 S.W.2d. 586, 591 (Tex. App. – Houston [1st Dist.] 1986, no writ.

On November 21, 2003 Donna Adams Hedrick filed with the 239th Judicial District Court **(APPENDIX L)** a **Motion for Appointment of Guardian Ad Litem and Motion for Continuance to Respond to Discovery and Other Motions.** This motion was filed regardless of the fact that **no motion is required for the court to appoint a guardian ad litem.** However, the court was put on notice of the physical and mental condition of Donna Adams Hedrick and her incapability to defend herself. The court took no action.

Liberty Mutual Insurance Company failed to answer this motion that was properly served on them. In an attempt to fraud the district and appeals courts that they did properly file an objection; Liberty Mutual Insurance Company filed an answer on June 27, 2005 over one year later and only in response to federal court filings.

On January 16, 2004 Donna Adams Hedrick filed and objection to an oral hearing to sever and abate *in re:* **Liberty Mutual Insurance Company v. Donna Adams**, No. 25628 (239th

Dist. Ct. Texas) with a request to appoint a guardian ad litem **(APPENDIX M).** Request was made that this be determined without hearing since no motion is required to request a guardian ad litem. The court failed to act.

With no regard to the **"due process"** rights of Donna Adams Hedrick, a disabled person, and a person incapable of defending herself; without appointment of a guardian ad litem, the 239th Judicial District Court issued an order Granting Severance and Abatement **(APPENDIX F).** This act is repugnant to the Constitution of the United States denying equal access to the courts for a disabled person.

At the federal levels the judicial system has failed to recognize or to protect the due process rights of Donna Adams Hedrick. In *re* **Liberty Mutual Insurance Company v. Donna Adams**, H-05-1974, (S.D. Tx.) the court **erroneously** connected the case removed to the federal court with previous attempts by the Hedrick's to secure the constitutional rights of Donna Adams Hedrick and instead attempted to avoid the constitutional issues **(APPENDIX B).**

The Honorable Judge Hoyt should have **"recluse himself"** from any decisions in this case since he had previously issued orders *in re* **Hedrick et al v. Texas Workers' Compensation Commission**, H-01-3416 (S.D. Tx) which was taken to force the Texas Workers' Compensation Commission to issue required subpoenas at the administrative hearings and under the rights of Donna Adams to file suit for EEOC claims. This case was used by the Honorable Judge Hoyt as a reason to dismiss case number H-05-1974 and to justify the sanctions and threats.

Petitioners allege that the failure of the Honorable Judge Hoyt to recluse himself from **Liberty Mutual Insurance Company v. Donna Adams,** H-05-1974, and (S.D. Tx.) at the start of the case also violates the constitutional rights of Donna Adams Hedrick to a fair trial.

Instead of protecting the rights of a disabled person the judicial system has issued contempt orders and sanctions to

"silence" the constitutional issues of the case strictly to maintain the status quo.

There are numerous violations of the constitutional rights of Donna Adams at both the state and the federal level which support the granting of this motion.

There is no evidence to indicate that the 239th Judicial District Court, the United States District Court, Southern District of Texas, Houston Division or the 5th Circuit Court of Appeals made any attempt to protect the constitutionally guaranteed right of Donna Adams Hedrick to be properly represented before the court. In the interest of justice all of the rulings of the court in any related cases cannot stand the constitutional test.

Under the Americans with Disability Act, Donna Adams Hedrick is considered to be a "qualified individual with a disability". As such, the court is required to attempt to accommodate her disability under the Equal Rights Protections clauses of the Constitution of the United States. Appointing a guardian ad litem, recognizing power of attorney status or next best friend status of Robert Hedrick, or holding hearings by telephone **are not** unreasonable accommodations for the court to make in protecting the equal rights to access to the courts and due process rights of Donna Adams Hedrick.

Neither the lower court nor the federal district court attempted to comply with either of these rights. *In re:* **Popovich v. Cuyahoga County Court of Common Pleas,** 276 F. 3d 808 (6th Cir. 2002) (en banc), cert. denied, 2002 WL 704377, No. 01-1503 (October 7, 2002) the state defendant was not immune from the plaintiffs' damages claims under Title II of the Americans with Disabilities Act (ADA). Adams/Hedrick invokes the decisions of the court in **Popovich** to complain of the lack of actions by the state court to protect the rights of Donna Adams Hedrick.

Among the rights protected by the Due Process Clause of the Fourteenth Amendment is the right of access to courts. The Due Process Clause has been interpreted to provide that "an accused has a right to be present at all stages of the trial where his

absence might frustrate the fairness of the proceedings". *Faretta v. California*, 422 U.S. 806, 819 n. 15 (1975). The Sixth Amendment "grants to accused, personally the right to make his defense. Parties in civil litigation have an analogous due process right to be present in the courtroom and to meaningful participate. See, *e.g. Popovich*, 276 F.3d at 813-14; *Helminski v. Ayerst Labs,* 766 F.2d 208, 213 (6th Cir.), cert. denied, 474 U.S. 981 (1985). These guarantees are protective of the due process principles of equal justice and fair treatment in our courts. Those who fail to appear in response to a court order cannot be sanctioned for that failure without being afforded due process. See, *e.g., Groppi v. Leslie,* 404 U.S. 496, 502 (1972). The state and federal courts both violated these Sixth (6th) Amendment rights.

Central both to the idea of the rule of law, and to our own Constitution's guarantee of equal protection, is the principle that government and each of its parts remain open on impartial terms to all who seek its assistance. **"Equal protection under the law is not achieved through indiscriminate imposition of inequities."** *Romer v. Evans,* 517 U.S. 620, 134 L. Ed. 2d 855, 866.[8]

Some states have recognized this deprivation of constitutional guarantees of equal access to the courts from administrative hearings. The legal communities as well as judges are divided on the issue. Only the United States Supreme Court may resolve an issue that affects millions of disabled Americans.

In re: **Nolan v. Department of Public Welfare,** 673 A. 2d. 414 (Pa. 1995) the court ruled that:

"Parties generally do not have a right to be represented by non-lawyers before Pennsylvania courts and most administrative agencies. However, non-lawyers are permitted to represent medical assistance applicants in appeals. The order prohibiting one from representing applicants is reversed."

---

[8] As quoted in Leonard W. Schroeter's Treatise *The Jurisprudence of Access to Justice from Magna Carta to Romer v. Evans via Marbury v. Madison.*

The State of Pennsylvania recognizes that in medical assistance cases non-attorneys who represent in administrative hearings are allowed to continue to the end of the case to include the appeals process in Pennsylvania courts. Adams and Hedrick are asking the 5th Circuit Court of Appeals to declare the laws in Pennsylvania either **Constitutional** or **Unconstitutional** and apply that decision to Texas courts and administrative hearings where an appeal may be taken into court as a part of the process.

In re: **Cleveland Bar Association v. Comp Management, Inc**., 104 Ohio St. Ed 168, 2004 – Ohio – 6506 it was ruled that:

"Non lawyers who appear and practice in a representative capacity before the industrial Commission and the Bureau of Worker's Compensation in conformity to Industrial Commission Resolution No. R04-1-01 are not engaged in the practice of law."

On February 4, 2005, The Department of Justice and the Federal Trade Commission in their comments to Jeffery Alderman, Esq., Executive Director, Kansas Bar Association, 1200 S.W. Harrison Street, Topeka, KS, 66601 made the following proposed definition:

> **"The Justice Department and the Federal Trade Commission (FTC) believe that the definition of the practice of law should be limited to those activities where specialized legal knowledge and training is demonstrably necessary to protect the interests of consumers. Otherwise, consumers benefit from preserving competition between lawyers and non-lawyers."**
>
> **"The Justice Department and the FTC are concerned about increasing efforts across the country to prevent non-lawyers from competing with lawyers through the adoption of excessively broad unauthorized practice of law rules and opinions by state courts and legislatures."**

There is clearly a debate being conducted across the nation regarding this issue; requiring that the Supreme Court of the United States provide guidance. In the immediate case, Adams is

demanding that Hedrick represent her or be appointed representation by the court. Not to do so violates her constitutional guarantees of due process and equal access to the courts in light of her mental and physical disabilities.

Bar Associations across the nation are struggling with the issue of non-attorney's verses attorney's where low income and disabled persons are involved. In 1996 the Washington State Bar Association established the Systems Impediments to Access to Justice Committee (SIAJ) to look into how low income and disabled persons could obtain meaningful access to the civil justice system. The Honorable Cynthia Imbrogno, United States Magistrate Judge, Eastern District of Washington states in her Article **"Making a Case for Expanding Non-Attorney Representation in Some State Administrative Settings":**

> **"The SIAJ *Report* primarily focused on the administrative level as this seems to be where the need for solutions is greatest. There are 60,000 case filings a year in Washington for state administrative hearings, and it is believed that legislation slated as "welfare reform" is stressing not only state administrative processes, but also federal ones. For example, it was estimated that in 1997, more than 100,000 disabled children lost Supplemental Security Income (SSI). The lack of attorney representation for these tens of thousands of low-income persons at the administrative level was identified in the *Report* as serious impediment to access to civil justice. By the time the few appealed administrative cases (estimated at 1 percent) reach superior court, the damage has been done in terms of the record, which likely was not developed if there was no attorney involvement. The sheer numbers of those in need far exceed the best pro bono efforts of our Bar,"**

This would seem to be contrary to Adams/Hedrick's argument; but it is not. If the court is going to allow Hedrick or other non-attorneys to represent in state administrative hearings, but not proceed to the end of the appeals process in court a violation of constitutional guarantees occurs. If Hedrick and non-

attorneys cannot proceed into court they should be prohibited from representation in administrative hearings.

The attorneys will then have to step up to the plate and charge less for their services or the court must direct **pro bono quotas to all attorneys.** A violation of constitutional guarantees to equal access to the courts occurs in the case of low income injured workers. If only attorneys are allowed in the administrative hearings; the judicial system must provide the level of pro bono attorneys (by force of licensing requirements if required) to meet the equal access guarantees of the United States Constitution for low income injured workers so that the attorney who represents at the administrative hearing must continue to the end of the appeals. To break it up into two parts is detrimental to access to the courts for disabled or low income persons who cannot secure an attorney at the administrative level and certainly not at the court level. In fact, to allow this situation to continue to fester is **repugnant** to the very **core** of the foundation set for freedom in the Constitution of the United States.

The best reason for granting this motion comes from the judicial members themselves! The Honorable Cynthia Imbrogno[9] states:

> **"It is time for all members of our profession, lawyers and judges, to take an introspective look at, and leadership in, acknowledging there are needs of the society we serve that we currently are unable to meet. If that premise is accepted, then the separate questions of training, standards, regulation and supervision will require discussion as well. For the thousands of Washington citizens currently "hitting the concrete,' this cannot happen too quickly."[10]**

---

[9] The Honorable **Cynthia Imbrogno,** United States Magistrate Judge, Eastern District of Washington, was chair of the Systems Impediments to Access to Justice (SIAJ) Committee for the Access to Justice Board and ex officio member of the Board's Jurisprudence of the Access to Justice Committee.

[10] **"Making a Case for Expanding Non-Attorney Representation in Some State Administrative Settings" by** The Honorable **Cynthia Imbrogno,**

The Supreme Court is being requested to either:

a. Allow **"non-attorney"** representation to continue on to the end of all appeals processes and declare Texas Government Code, Chapter 81 **"unconstitutional"** as it applies to appeals from state administrative hearings or;

b. That Texas Workers' Compensation Act, Title 5, Subtitle A, Section 410.006 which allows **"non-attorney"** representation in administrative hearings but not on into court is **"unconstitutional"** and;

c. To reverse all orders and decisions in all cases at both the state and federal level that have violated the constitutional rights of Donna Adams Hedrick and the rights of Robert Hedrick to represent her and further;

d. To direct the United States District Court to assume original jurisdiction over the 2nd injury on August 17th, 2000, the claims and damages and set it for trial; and further;

e. To direct the federal court and state court to recognize the status of Robert Hedrick to represent his spouse under power of attorney, as next best friend or appoint a guardian ad litem on the March 29, 2000 injury allowing it to continue separately in state court; and further;

f. To order that Liberty **Mutual Insurance Company v. Donna Adams,** No. 25628 be separated from **Liberty Mutual Insurance Company v. Donna Adams**, No. 25628-1 (239th Dist. Ct. Texas) to proceed concurrently as separate lawsuits.

f. Reverse and void all sanctions and attorney fees accessed against Donna Adams Hedrick and Robert Hedrick in all cases.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Donna Adams Hedrick

DONNA ADAMS-HEDRICK, Pro *Se*
16718 Bougainvilla Lane
Friendswood, TX 77456
Tel: (281)648-1784

ROBERT HEDRICK, *Pro Se*
16718 Bougainvilla Lane
Friendswood, TX 77456
Tel: (281)648-1784

DECEMBER 4, 2006

(2) Supreme Court, U.S.
FILED

06-913 NOV 09 2006

OFFICE OF THE CLERK

NO.

IN THE SUPREME COURT OF THE UNITED STATES

DONNA ADAMS – HEDRICK,
Petitioner,

ROBERT HEDRICK,
Petitioner,

v.

LIBERTY MUTUAL INSURANCE COMPANY,
Respondent

On Petition for Writ of Certiorari to
The United States Court of Appeals for the Fifth Circuit

APPENDICES FOR PETITION FOR A WRIT OF CERTIORARI

DONNA ADAMS-HEDRICK, Pro *Se*
16718 Bougainvilla Lane
Friendswood, TX 77456
Tel: (281)648-1784

ROBERT HEDRICK, *Pro Se*
16718 Bougainvilla Lane
Friendswood, TX 77456
Tel: (281)648-1784

APPENDICES
TABLE OF CONTENTS

APPENDIX A – Opinion of 5th Circuit Court of Appeals, 05-20816, September 15, 2006 1a

APPENDIX B – Order of the United States District Court, **ORDER GRANTING PLAINTIFF LIBERTY MUTUAL INSURANCE COMPANY'S MOTION FOR SANCTIONS AND MOTION FOR STATUTORY ATTORNEY'S FEES,** 05-1974. 3a

APPENDIX C - Order of the United States District Court, 05-1974. 6a

APPENDIX D - TRANSCRIPT OF PROCEEDINGS BEFORE THE HONORABLE KENNETH HOYT HEARING on July 25, 2005. 7a

APPENDIX E - Recusal Order of Kenneth M. Hoyt on November 16, 2006. 19a

APPENDIX F - ORDER GRANTING SEVERANCE AND ABATEMENT, No. 25628, 239th Judicial District Court. 20a

APPENDIX G - DECISION AND ORDER, Texas Workers' Compensation Commission, Docket No. H3-00071055-02-HD48 & HE-X2153-405-01-CC-HD48. 23a

APPENDIX H – Durable Power of Attorney, Grantor, Donna Gail Adams; Grantee, Robert Hedrick, dtd October 2, 2000. 33a

APPENDIX I – Sphuler Medical Condition of Donna Adams (Hedrick) to United Sates District Court on May 4, 2005. 41a

APPENDIX J - DEFENDANT'S MOTION TO RECOGNIZED "NEXT BEST FRIEND" MOTION TO RECOGNIZE STANDING UNDER POWER OF ATTORNEY OR IN LIEU OF MOTION FOR APPOINTMENT OF GUARDING AD LITEM, 42a

APPENDIX K - Sphuler Medical Condition of Donna Adams (Hedrick) to United Sates District Court On July 20, 2005. 45a

APPENDIX L - DEFENDANT'S MOTION FOR APPOINTMENT OF GUARDIAN AD LITEM AND MOTION FOR CONTINUANCE TO RESPOND TO DISCOVERY AND OTHER MOTIONS, No. 25628, 239th Judicial District Court. 46a

APPENDIX M - OBJECTION TO ORAL HEARING SCHEDULED FOR MONDAY, January 26, 2002 at 1:00 p.m. on PLAINTIFF'S MOTION TO SEVER; MOTION TO ABATEREQUEST FOR CONTINUANCE ON PLAINTIFF'S MOTION TO SEVER; MOTION TO ABATE UNTIL HEARING AND RULING ON DEFENDANT'S MOTION FOR CONTEMPT; MOTION FOR SANCTIONS; MOTION TO COMPEL; MOTION FOR FINDING OF "BAD FAITH" ACTION; MOTION TO DISQUALIFY TOMMY L. SMITH AND REQUEST FOR DEFAULT ORDER (WITHOUT HEARING) ON DEFENDANT'S MOTION FOR APPOINTMENT OF GUARDIAN AD LITEM AND MOTION FOR CONTINUANCE TO RESPOND TO DISCOVERY AND OTHER MOTIONS

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-20816
Summary Calendar

LIBERTY MUTUAL INSURANCE COMPANY,

Plaintiff-Appellee,

versus

DONNA ADAMS,

Defendant-Appellant,
ROBERT HEDRICK

Intervenor Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:05-CV-1974

Before KING, HIGGINBOTHAM, and GARZA, Circuit Judges.

PER CURIAM:*•

Appellee's motion to dismiss for lack of jurisdiction appeal of district court's remand order and ostensible appeals of any other orders, other than that granting Appellee's motion for sanctions and statutory fees, is GRANTED. See 28 U.S.C. § 1447(d); *see also* Louisville & Nashville R. Co. v. Mottley, 211 U.S. 149, 150-53 (1908) (plaintiff, not defendant, controls

---

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.1.

removability of case (; Sitton v. United States, 413 F.2d 1386, 1389 (5th Cir. 1969) (federal courts do not act as appellate arm of state courts.).

The districts court's sanctions order against Appellants, under Federal Rule of Civil Procedure 11, which granted non-monetary relief and, based on fees incurred by Appellee during its two prior successful remands, $10,750, was not an abuse of discretion and is AFFIRMED. *See Skidmore Energy, Inc. v. KPMG,* 455 F.3D 564, 566 (5TH Cir. 2006). To the extent Appellants appeal the court's award of &7,031.25 in statutory fees under 28 U.S.C. $ 1447(c), that award was also not an abuse of discretion and is AFFIRMED. *See Hornbuckle v. State Farm Lloyds,* 385 F. 3d 538, 541 (5th Cir. 2004).

Appellee's motion for costs on appeal and motion, pursuant to Federal Rule of Appellate Procedure 38, for damages in the amount of fees incurred in defending this appeal are GRANTED and the matter REMANDED to the district court for determination of such (single) costs and fees incurred in defending this appeal. *See Lyons v. Sheetz,* 834 F.2d 493, 495-96 (5th Cir. 1987); *Clark v. Green,* 814 F.2d 221, 223 (5th Cir. 1987) (explaining that even pro se litigants lack "unrestrained license to pursue totally frivolous appeals").

Appellants' motion for $20,000 in sanctions against Appellee, motion to turn appeal over to the FBI for investigation of allegations of conspiracy between employees of this court and Appellee, and motion to continue all actions pending the outcome of that investigation are DENIED.

Finally, we warn Appellants that additional frivolous pleadings, suits, or appeals filed by them in this matter will invite further sanctions. It is time for the underlying case to proceed in state court.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LIBERTY MUTUAL INSURANCE COMPANY PLAINTIFF,	§	
VS.	§	NO. H-05-1974
DONNA ADAMS, DEFENDANT.	§	
ROBERT HEDRICK, GRANTEE UNDER POWER OF ATTORNEY, NEXT BEST FRIEND; SPOUSE & INTERVENOR	§	CASE NO. 25628-1 REMOVED FROM 239TH JUDICIAL DISTRICT BRAZORIA COUNTY, TX

ORDER GRANTING PLAINTIFF LIBERTY MUTUAL INSURANCE COMPANY'S MOTION FOR SANCTIONS AND MOTION FOR STATUTORY ATTORNEY'S FEES

On consideration of the Motion for Sanction and Motion for Statutory Attorney's Fees of Plaintiff LIBERTY MUTUAL INSURANCE COMPANY, in the above entitled and numbered cause, for the imposition of sanctions on Defendant DONNA ADAMS and Intervenor ROBERT HEDRICK and for an award of statutory attorney's fees, it appears to the Court that the actions of Defendant DONNA ADAMS and Intervenor ROBERT HEDRICK in filing their Notice of Removal on June 6, 2005, violated Rule 11(b)(1), (2) and (3) of the Federal Rules of Civil Procedure, were in bad faith and without substantial justification in that the Notice of Removal filed on June 6, 2005, is identical in nature and involves the same parties and issues, as two prior Notices of Removal filed by Defendant DONNA ADAMS and Intervenor ROBERT HEDRICK under Case Nos. H-04-0954 and H-05-0987 that were concluded by Orders of Remand dated October 22, 2004

and May 6, 2005, respectively, in favor of Plaintiff LIBERTY MUTUAL INSURANCE COMPANY and against Defendant DONNA ADAMS and Intervenor ROBERT HEDRICK and involved the same jurisdictional issues as those in Case No. H-01-3416 that was concluded by an Order of Dismissal dated December 10, 2001, which was affirmed on appeal in Cause No. 02-20111 before the Fifth Circuit, justifying an imposition of monetary and nonmonetary sanctions.

It further appears to the Court that Plaintiff LIBERTY MUTUAL INSURANCE COMPANY is the prevailing party in this action, that an award of statutory attorney's fees is authorized by 28 U.S.C. 1447(c) and that according to the guidelines set forth in *Johnson v. Georgia Highway Express, Inc.*,488 F.2d 714 (5th Cir. 1974), each of which were considered by the Court, the attorney's fees requested by Plaintiff LIBERTY MUTUAL INSURANCE COMPANY in the amount of $7,031.25 are reasonable, necessary and merited considering the actions of the Defendant DONNA ADAMS, and Intervenor ROBERT HEDRICK and the issues presented in this case. It is therefore,

ORDERED that Defendant DONNA ADAMS and Intervenor ROBERT HEDRICK, jointly and severally, are required, pursuant to 28 U.S.C. 1447(c) to pay Plaintiff LIBERTY MUTUAL INSURANCE COMPANY, the costs and expenses including attorney's fees in the amount of $7,031.25 incurred by Plaintiff LIBERTY MUTUAL INSURANCE COMPANY in opposing the June 6, 2005 removal action filed by Defendant DONNA ADAMS and Intervenor ROBERT HEDRICK, for which let execution issue. It is further

ORDERED that Defendant DONNA ADAMS and Intervenor ROBERT HEDRICK, their agents, employees, representatives and attorneys, are sanctioned from filing any further pleadings, suits or removals against LIBERTY MUTUAL INSURANCE COMPANY, its agents, employees, representative and attorneys, having its genesis in the March 29, 2000 on-the-job injury workers' compensation claim, in the U.S. District Court, Southern District of Texas, Houston Division, and in any state court of the State of Texas:

a. That upon presentation to the Clerk of a pleading by DONNA ADAMS, DONNA ADAMS HEDRICK, DONNA HEDRICK and/or ROBERT HEDRICK, or

under any alias, or their agents, employees, representatives, guardian, guardian ad litem, attorney-in-fact and attorneys or any person or entity, not a licensed attorney, acting upon their behalf, the Clerk shall file the pleading, but shall not issue summons:

b. The Clerk shall attach a copy of the Order of this Court granting these sanctions to the pleading and immediately present it to the Court for review;

c. No attempt to serve the pleading shall be made by any person until the Court reviews the complaint, finds it is not frivolous, and Orders summons to issue and service to proceed;

d. If the Court finds the pleading or any part of it is frivolous, it shall *sua sponte* dismiss the pleading and impose sanctions upon DONNA ADAMS and ROBERT HEDRICK or anyone acting on their behalf or in concert with them shall result in sanctions, up to and including prosecution for contempt pursuant to 18 U.S.C. §§ 401, 402; and further

ORDERED that DONNA ADAMS and ROBERT HEDRICK, both jointly and severally are sanctioned with a monetary directive and required to pay all reasonable attorney's fees in connection with LIBERTY MUTUAL INSURANCE COMPANY'S successful remands of this case to state court after ADAMS' and HEDRICK'S March 10, 2004 and March 23, 2005, removed actions in the amount of $10,750.00, for which let execution issue.

Signed July 25, 2005, at Houston, Texas.

_____

Kenneth M. Hoyt
United States District Judge.

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LIBERTY MUTUAL	§	
INSURANCE COMPANY	§	
Plaintiff,	§	
VS.	§	CIVIL ACTION H-05-1974
	§	
DONNA ADAMS,	§	
Defendant.	§	

ORDER

Pursuant to the Fifth Circuit Court of Appeals' instructions on remand in this case, the plaintiff, Liberty Mutual Insurance Company, shall provide a motion for costs and fees incurred in defending the appeal of this case with an appropriate proposed order within 30 days. Ten (10) days after the filing of the plaintiff's motion, the defendants Adams and Hedrick shall file a response.

It is so Ordered.

SIGNED and ENTERED this 28th day of September, 2006.

_____

Kenneth M. Hoyt
United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LIBERTY MUTUAL INSURANCE COMPANY,	.	
Plaintiff	.	
	.	Civil Action
VS.	.	No. H-05-CV-1974
	.	
DONNA ADAMS,	.	Houston, Texas
Defendant	.	July 25, 2005

.....

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE KENNETH HOYT
HEARING

APPEARANCES:

FOR THE PLAINTIFF:

Ms. Mary Markantonis
DEAN G. PAPPAS AND ASSOCIATES
10375 Richmond Avenue
Suite 1900
Houston, Texas 77042
(713)914-6201

COURT REPORTER:

GAYLE L. DYE, CSR, RDR, CRR
515 Rusk, Room 8016
Houston, Texas 77002
(713)250-5582

PROCEEDINGS RECORDED BY STENOGRAPHIC MEANS, TRANSCRIPT PRODUCED FROM COMPUTER-AIDED TRANSCRIPTION

PROCEEDINGS
July 25, 2005

THE COURT: Are the parties present in 05-1974? Have you seen the Defendants Adams or Hedrick?

MS. MARKANTONIS: No, Your Honor. This morning at my office I received a motion –a motion to stay. It appears to have been filed last week, but my office only received it today. And I believe he's requesting that this hearing be continued for one week and to be held by telephone.

THE COURT: Well, I think that my staff communicated to him on last week that his motion would not be granted and that the court would not be – would not – I'll tell you what, why don't you come forward, please, and let's see if we can make a short record rather than take a break.

(Side-bar discussion off the record between the Court and the case manager.)

THE COURT: What is your name for the record, please?

MS. MARKANTONIS: Mary Markantonis. I'm with Dean, Pappas and Associates, and I represent Liberty Mutual.

THE COURT: All right. I think I need to correct the record. Our staff --- or my office did not contact him. I think the message that I left was that, if he contact us – contacted us, that is, Mr. Hedrick, that he was to be informed that the matter would not be continued because this is – is growing by the inch, it seems, in terms of the paperwork; and I'm not really sure I understand what's going on. So, let me ask you to make a little record for me here. Tell me how this started and how it has developed. I know that – I can see the procedural history. But what is the situation with Ms. Adams and what – how did this get started?

MS. MARKANTONIS: Well, Your Honor, originally, I believe in federal court this started in your court.

THE COURT: No. How did it get started? She was an employee someplace?

MS. MARKANTONIS: Yes, Your Honor. She worked for IBM.

THE COURT: All right.

MS. MARKANTONIS: And she had an on-the-job-injury.

THE COURT: What kind of injury did she have?

MS. MARKANTONIS: She had an injury to her respiratory system because of dust.

THE COURT: So, she is disabled?

MS. MARKANTONIS: She's not disabled as far as I know.

THE COURT: All Right.

MS. MARKANTONIS: I don't know if she's applied for disability or not.

THE COURT: So, she's – she has –

MS. MARKANTONIS: She has worked since those two worker's compensation claims. One was in March of 2000, I believe, and I'm not sure about the year. I have it in my pleadings but –

THE COURT: Okay, What is she claiming as a respiratory problem, like emphysema or something like that?

MS. MARKANTONIS: She has – she's more susceptible to asthma attacks and she had a –

THE COURT: Is that something that she claims to have just developed at IBM or is this something that she's had historically or does anybody know?

MS. MARKANTONIS: I believe she had asthma prior to-

THE COURT: As a child or as an adult growing up?

MS. MARKANTONIS: I can't tell you that.

THE COURT: Okay.

MS. MARKANTONIS: I didn't handle the worker's compensation claim, and I'm not familiar with those medical histories.

THE COURT: But I understand, from looking at the record as I – that I have before me, that those two claims – or the last of those claims has been resolved except, I gather, that Liberty Mutual has appealed that decision of the Compensation Board. And is that still pending as far as you know?

MS. MARKANTONIS: That's in question at this point as well. It is still pending. Where, I'm not sure. The –

THE COURT: There was an award made.

MS. MARKANTONIS: There was an award made. Liberty Mutual filed the original petition in Brazoria County, the county of residence of Ms. Adams –

THE COURT: Right.

MS. MARKANTONIS: -- to set aside that award. I entered the suit – I entered representation of Liberty Mutual during that time frame and proceeded to, you know, move the case forward.

THE COURT: Uh-huh.

MS. MARKANTONIS: At that point, in sending a motion to compel for more responsive answers to discovery requests, Mr. Hedrick on behalf of Ms. Adams filed that initial removal to federal court.

THE COURT: Un-huh.

MS. MARKANTONIS: And it was removed twice.

THE COURT: Uh-huh.

MS. MARKANTONIS: At this point, he decides to file a removal of the severed action, because during the pendency of the case in state court, he filed a cross claim for Ms. Adams based on bad faith or the handling of the insurance claim.

THE COURT: All right.

MS. MARKANTONIS: That was severed back in January of '04. Now he has removed the severed case; and in the process, he sued the Court, the judge –

THE COURT: The State Court?

MS. MARKANTONIS: That's correct.

THE COURT: And I saw something in your papers that said that he had recused himself.

MS. MARKANTONIS: Yes. I found out when I went for a hearing, which, of course, did not take place, in June – last month that the judge was recusing himself and he was going to transfer the case out of his court and possibly out of Brazoria County. He said he was going to discuss it with the administrative judge for that district, and I have not been notified where the case has been sent.

THE COURT: Has Mr. Hedrick, as far as you know, threatened any of these persons? I'm not sure what the nature of the removal is. It's one thing to tell a person to get out of town, it's another thing for you to move out of town. I mean, what is Mr. Hedrick's – is he doing something that the judge is concerned about other than being litigious here?

MS. MARKANTONIS: Well, I believe that the judge was going to send the case away from that courthouse because he couldn't – he didn't feel right hoisting it onto –

THE COURT: To another judge.

MS. MARKANTONIS: --another judge.

THE COURT: I see. I see. So, in the interest of avoiding further entanglement, I guess, of other judges –

MS. MARKANTONIS: That he knew personally.

THE COURT: Yes, Okay. Is Ms. Adams simply wearing a maiden name or are they still married?

MS. MARKANTONIS: I believe they are still married. But the claim was filed on Adams. And so, that's the way it was done.

THE COURT: And is that the way she's employed, as far as you know, Donna Adams?

MS. MARKANTONIS: I don't know. I can't speak to that.

THE COURT: Is she working now?

MS. MARKANTONIS: I don't know. I can't speak to that.

THE COURT: And what was the award? How much money was awarded in the – in the worker's comp. case, if you recollect?

MS. MARKANTONIS: Well, she received temporary disability benefits and –

THE COURT: Does that mean a monthly payment or something?

MS. MARKANTONIS: Weekly.

THE COURT: A weekly payment?

MS. MARKANTONIS: Yes, Your Honor.

THE COURT: And –

MS. MARKANTONIS: And then, when she returned to work, then they were stopped.

THE COURT: Okay. And so, she returned to work since that award was made?

MS. MARKANTONIS: I believe -- I was – I was told by, well, another attorney in my firm that handled the worker's compensation claim that she had returned to work – had worked since –

THE COURT: At some point since that –

MS. MARKANTONIS: Yes, Your Honor.

THE COURT: -- since that award?

MS. MARKANTONIS: Yes.

THE COURT: -- And what is it that Liberty Mutual is attempting to avoid, a lump sum settlement of some sort, percentage of disability award?

MS. MARKANTONIS: Yes, that. And the fact that the litigious nature of Ms. Adams and her husband, Mr. Hedrick, have caused additional lawsuit –

THE COURT: Uh-huh.

MS. MARKANTONIS: -- and additional claims –

THE COURT: Well, but I mean the genesis of part of this is is Liberty Mutual appealing the award that was made by the Compensation Board and approved by, I guess –

MS. MARKANTONIS: The Appeals Panel.

THE COURT: -- the Appeal Panel. So, there was some award made, and that was, I guess, to pay so much on a weekly basis; and at the end of that term, there very well might have been some basis for a lump sum award depending upon whether or not there was a percentage of disability concern. And I'm just trying to figure out what Liberty Mutual was appealing. Apparently, they did not – Liberty Mutual did not pay the weekly award.

MS. MARKANTONIS: They did pay the weekly award.

THE COURT: Okay.

THE COURT: So, if there's anything –

MS. MARKANTONIS: It's really an appeal of the finding that she sustained a compensable injury, and it was a reaggravation because –

THE COURT: So, if you were to win on that, you really don't get the money back –

MS. MARKANTONIS: No.

THE COURT: -- or you don't – you put yourself in a position, I guess, where you would maybe avoid some future problems with the same employee.

MS. MARKANTONIS: Yes, Your Honor, which are –

THE COURT: I see.

MS. MARKANTONIS: -- very possible.

THE COURT: Likely, in the sense that she's subject to having these attacks, apparently. I see. Okay.

Myra, do we have a phone number for Mr. – Mr. Hedrick?

THE CASE MANAGER: Yes, sir, I do.

THE COURT: Do we know whether or not he –

(Discussion off the record between the Court and the case manager.)

(Recorded message played on the phone.)

THE COURT: What did she say?

MS. MARKANTONIS: She said Donna and Bob.

THE COURT: Oh, Donna and Bob. All right. Well, Mr. Hedrick, Ms. Adams, this is Judge Hoyt calling regarding your case and attempting to locate you and talk to you about your case because you're due in court today. My number is 713-250-5615 -- 5613. Thank you very much. Yeah, I hung it up.

THE CASE MANAGER: Okay.

THE COURT: Do you know where she is working?

MS. MARKANTONIS: I don't. And I don't know if she is working now.

THE COURT: She probably still works for IBM, do you think?

MS. MARKANTONIS: No, she does not work for IBM anymore.

THE COURT: She does not work for IBM anymore, uh.

MS. MARKANTONIS: And I don't know if she's presently employed either.

THE COURT: Uh-huh. Do you know Dr. Wanda Sphuler?

MS. MARKANTONIS: No, Your Honor.

THE COURT: I've got some – I've got a letterhead here from Sphuler Medical Associates in Friendswood, Texas and a letter signed by someone representing themselves to be Dr. Sphuler. It does not have letterhead for a return address. Well, let's see, maybe it does.

MS. MARKANTONIS: The second one does.

THE COURT: This is the back side of it. The second page does doesn't it?

MS. MARKANTONIS: Yes, Your Honor, I noticed that too. And for the record, I don't have any objection to hold the hearings with Adams and Hedrick by phone on their part.

THE COURT: **I have a problem with that. I need to look at the man who's filing these proceedings and practicing law without a license, and I'm concerned about that, and these things have a way of developing into things that are way beyond what we would like to see happening at the courthouse because, generally, the frustration and anger turns away from Liberty Mutual and then toward the Courts. And when it does that, it does concern me. If she's able to go to work, leave the house, she's certainly able to come to the courthouse. So, what do you want? What action do you want?**

MS. MARKANTONIS: Well, Your Honor, I'd like to have the case remanded back to state court, and I'd like to have sanctions entered against Adams and Hedrick from filing anything further in federal court unless a federal court judge inspects their pleadings. And if they're found to be not frivolous, then they can proceed with the action. But if they're frivolous, I'd like for them all to be dismissed immediately without having to have my clients defend them.

THE COURT: What case or cases are pending at this point? Is it just the case pending here or are there other cases pending in our federal court system?

MS. MARKANTONIS: There is a case against Judge Sebesta.

THE COURT: That's pending in the federal courts?

MS. MARKANTONIS: Yes, Your Honor. And the state attorney general – Attorney General's Office has filed a motion to dismiss that case.

THE COURT: Do you know who that's pending before?

MS. MARKANTONIS: No, Your Honor. But –

THE COURT: It's no problem. I didn't know if you were involved in that in some respect.

MS. MARKANTONIS: No, I'm not. I do know the case number is 2100, I believe.

THE COURT: 2100?

MS. MARKANTONIS: Yes, Your Honor.

THE COURT: Is that an '05 number?

MS. MARKANTONIS: Yes, Your Honor.

THE COURT: 05-2100. Where is that, Myra, if you can see it for us.

THE CASE MANAGER: That's actually pending before Judge Johnson, Nancy Johnson.

THE COURT: How did it get there, transfer from one of the ---she's working for who? Who is she a magistrate for, Judge Lake and who else? And Rainey?

THE CASE MANAGER: There was an order referring it from Judge Lake.

THE COURT: Okay. So, it's Sim Lake's case. Okay. All right. I can't think of anything else that we can ask or do. So, I will review your documents and , in essential, grant the motions that you've requested.

MS. MARKANTONIS: Thank you , Your Honor.

THE COURT: All right? All right. Thank you very much.

MS. MARKANTONIS: Thank you.

(Proceedings concluded.)

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter, to the best of my ability.

SIGNED 10/25/05

Gayle L. Dye, CSR, RDR, CRR Date

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LIBERTY MUTUAL	§
INSURANCE COMPANY	§
PLAINTIFF/CROSS	§
DEFENDANT	§
V.	§
	§ No. H-05-1974
DONNA ADAMS	§
DEFENDANT	§
	§ Case#25628-1 Removed
ROBERT HEDRICK	§ from 239th Judicial
GRANTEE UNDER	§ District Court,
POWER OF ATTORNEY;	§ Brazoria County, TX
NEXT BEST FRIEND;	§
SPOUSE; INTERVENOR	§

RECUSAL ORDER

I stand recused in this case.

_____
KENNETH M. HOYT
United States District Judge

Date: November 16, 2006

APPENDIX F

NO. 25628

LIBERTY MUTUAL INSURANCE COMPANY, Plaintiff,	§ IN THE DISTRICT COURT § § OF BRAZORIA § COUNTY, TEXAS § 239TH JUDICIAL DISTRICT
VS.	§ §
DONNA ADAMS, Defendant,	§ §

ORDER GRANTING SEVERANCE AND ABATEMENT

BEFORE THIS COURT is LIBERTY MUTUAL INSURANCE COMPANY'S Motion to Sever and Motion for Abatement. After reviewing the Motion, any responses, and the pleadings on file herein, the Court is of the opinion that LIBERTY MUTUAL INSURANCE COMPANY's Motion to Sever and Plea in Abatement are meritorious and should be granted. It is therefore,

ORDERED, ADJUDGED, AND DECREED that all of the claims and clauses of action asserted by DONNA ADAMS for bad faith, breach of the duty of good faith and fair dealing, extra-contractual claims and causes of action, claims under the Texas Deceptive Trade Practices Act, § 17.46, Tex.Bus. & Comm. Code, claims under Article 21.21 of the Texas Insurance Code, the Unfair Claims Settlement Practices Act, allegations for "breach of contract", extra-contractually related and claims for attorney's fee unrelated to the claimant's claim for statutory workers' compensation claim benefits, and any other claims and causes of action unrelated to the claim of DONNA ADAMS for statutory workers' compensation benefits against LIBERTY MUTUAL INSURANCE COMPANY are hereby severed. It is further,

ORDERED, ADJUDGED AND DECREED by the Court that the Clerk of the Court are hereby Ordered to assign the severed action the separate cause number of 25628-A, and to

prepare certified copies of the following documents and include them in file Cause No. 25628-A:

1. Plaintiff's Original Petition of LIBERTY MUTUAL INSURANCE COMPANY;
2. Defendant's Original Answer of DONNA ADAMS;
3. Defendant DONNA ADAMS' Counter Claim;
4. LIBERTY MUTUAL INSURANCE COMPANY, Plaintiff/Counter-Defendant's Original Answer to Counter-Claim;
5. LIBERTY MUTUAL INSURANCE COMPANY'S Motion to Sever and Plea to Abatement.
6. A copy of this Order granting severance and abatement;
7. A copy of the Court's Docket Sheet.

It is further,

ORDERED that all of the claims and causes of action asserted by DONNA ADAMS for bad faith, breach of the duty of good faith and fair dealing, extra-contractual claims and causes of action, claims under the Texas Deceptive Trade Practices Act, § 17.46, Tex. Bus. & Com. Code, claims under Article 21.21 of the Texas Insurance Code, the Unfair Claims Settlement Practices Act, allegations for "breach of contract," extra-contractually related and all other claims in the severed action against LIBERTY MUTUAL INSURANCE COMPANY are hereby ABATED until final determination of DONNA ADAMS' claims and causes of action bro underlying statutory workers' compensation benefits.

SIGNED this 26th day of January, 2003

Pat Sebesta
Judge Presiding

APPROVED:

DEAN G. Pappas & Associates

By Dean G. Pappas
Dean G. Pappas
State Bar No. 15454375
10375 Richmond Avenue, Suite 1900

Houston, Texas 77042
(713)914-6200
(713)914-6201 (Facsimile)

ATTORNEY FOR PALINTIFF/
COUNTER-DEFENDANT
LIBERTY MUTUAL INSURANCE COMPANY

APPENDIX G

TEXAS WORKERS' COMPENSATION COMMISSION
HEARINGS DIVISION
HOUSTON EAST LOCAL OFFICE
HOUSTON, TEXAS

DONNA ADAMS,	§
CLAIMANT	§
	§
v.	§ **DOCKET NO.**
	§ **HE-00071055-02-CC-HD48**
LIBERTY MUTUAL INS.CO.	§ **And**
CARRIER	§**HE-X2153-405-01-CC-HD48**
	§

DECISION AND ORDER

This case is decided under the Texas Workers' Compensation Act (the Act), Tex.Labor Code ann. §§ 410.151 –410.169 (Vernon 1996, Supp. 2003) and Tex. Workers' Comp Comm'n, 28 Tex. Admin. Code §§ 142.1 – 142.20 (West).

STATEMENT OF THE CASE

Benefit review conferences were held on May 17, 2001 to mediate resolution of the disputed issue(s), but the parties were unable to reach agreement. A benefit contested case hearing was held on April 24, 2003, with the record closing on the same date, to decide the following disputed issue(s):

In 00071055-01:

1. Did the claimant's inhalation injury of March 29, 2000 extend to include chronic obstructive pulmonary disease and chronic asthma, as well as mental trauma?
2. Did the claimant sustain disability as a result of the compensable injury, and if so, for what period?

In X2153405-01:

1. Did the claimant sustain a compensable injury to her lungs on August 17, 2000?
2. Did the claimant sustain disability as a result of an August 17, 2000 injury, and if so, for what period? (restated with permission of the parties)
3. Is the carrier relieved of liability due to claimant's failure to timely report her injury within 30 days? (restated with permission of the parties)

Claimant appeared and was represented by Robert Hedrick, representative. Carrier appeared and was represented by Tommy Smith, attorney. In attendance on behalf of the employer was Michael Clark. Also present was Traci Gardner, adjustor.

EVIDENCE PRESENTED

The following witnesses testified:

Claimant, Donna Adams
Robert Hedrick
Ann Grote
Traci Gardner
Michael Clark

Exhibits were offered and admitted as set out in the record:
Claimant exhibits:

Book 1
Tab 1, BRC report
Tab 2, BRC report
Tab 3, Points and authorities
Tab 4, affidavits, lettered A through H
Tab 5, Medications list
Tab 6, Claimant's argument
Michael Clark Deposition transcript with exhibits

Book 2

A. IBM Health assessment questionnaire
B. Medical report
C. Clear Lake RMC
D. Clear Lake RMC

E. Clear Lake RMC
F. Radiology report
G. Chest x-ray
H. Radiology report
I. Photo-24 Hour Fitness
J. Photo, formica sheets
K. Photo, counters and dust
L. Photo, Counters, formica panels and dust
M. Affidavit, Knighten
N. Admission record, Memorial Hospital Southeast
O. Radiology report
P. Radiology report
Q. Dr. Gupta
R. Discharge diagnosis
S. Preliminary local climatological data
T. Affidavit, Thacker
U. Admission record, Dr. DeWitt
V. Photo, drywall patch
W. Discharge diagnosis
X. Affidavit, Lindeman
Y. Radiology report
Z. Radiology report
AA. Corke statement
BB. Medical evaluation, Dr. Botto
CC. TWCC IME
113. Dr. Chan-Yeung
114. NORA priority research areas
115. Occupational asthma
116. Occupational & Environmental Sensitization
117. Primer on allergic reactions
118. Allergic reactions
119. Allergic reactions
120. Allergic reactions
121. Plastics, Brian Kohler
122. Manual for the manufacture of polymer matrix composites
123. Formica brand laminate-manufacturing process

124. Formica Canada Inc. v. Deputy Minister
125. Fact sheet, epoxy resin systems
126. The MSDS – what is it?
127. Interpreting toxicity values
128. MSDS, plywood and particle board
129. MSDS, formaldehyde
130. MSDS, ammonium hydroxide
131. MSDS, Anhydrous ammonia
132. MSDS, Urea formaldehyde resin
133. MSDS, Urea
134. MSDS, Biuret
135. MSDS, sodium hydroxide
136. MSDS, potassium sodium tartrate
137. MSDS, cupric sulfate pentahydrate
138. MSDS, barium chloride
139. MSDS, formalin
140. MSDS, phenolic resin
141. MSDS, melamine
142. MSDS, alkyd resin solution
143. MSDS, tetrachlorophthalic anhydride
144. MSDS, Phthalic anhydride
145. MSDS, trimellitic anhydride
146. MSDS, Weldwood plastic resin glue

Loose sheets (2 pages)
Table of Chemicals Claimant was exposed to on March 29, 2000

Carrier exhibits:

A. Letter, Donna Adams
B. TWCC-41 and 45
C. IBM documents
D. Note from Donna Adams
E. Documents from Liberty Mutual
F. Part, transcript conversation
G. Hedrick packet
H. Phone logs
I. Correspondence, Hedrick
J. Packet regarding OSHA
K. Dr. Gupta
L. Dr. McCarroll
M. Affidavits

N. Dr. Corke
O. Medical records, Memorial Southeast
P. Dr. Botto
Q. Clear Lake Hospital
R. Dr. Diaz
S. Dr. Varner
T. Letter, Tommy Smith
U.

Hearing Officer exhibits:

1. Benefit review Conference report
2. Benefit review Conference report
3. Carrier information
4. Motion for contempt, etc. with order
5. Motion for continuance with order

STATEMENT OF THE EVIDENCE

Claimant worked for IBM on a team that installed point of sale computer systems for customers who brought such products form IBM. Due to the type of work, Claimant was subject to whatever environment was found in the various customer locations.

Claimant had a long history of asthma, and it ran in her family. She was hospitalized at least three times wherein asthma was the primary cause of the hospitalization. Prior to the incidents in question, the last time was in March 1997. After that, she was put on some different medicine and seemed to have her asthma under control.

Michael Clark took over Claimant's team around March 1, 2000, and Claimant's situation with IBM and her health went downhill rapidly. On March 29, 2000 Claimant installed computer systems at a 24-Hour Fitness location that was under construction, and had the onset of a severe asthma attack that put her in the hospital for several days. At this construction site, they were installing floor tiles and Formica countertops, and painting. Dust was in the air, including dust from sanding countertops and cutting Formica, as were paint and glue fumes.

Claimant filed a claim for a compensable injury due to the asthma attack on March 29, and Carrier has accepted an injury in the form

of an aggravation of Claimant's chronic asthma. Under the Act, an aggravation is not merely an occurrence of symptoms, but instead is a worsening or exacerbation of the underlying condition.

Claimant returned to work around April 26, 2000, and did not miss a substantial amount of time until an event of August 17, 2000. She had been having some increasing symptoms that week, and had missed two days that she had attributed to asthma. On August 17, she worked for several hours in a bank building with no air conditioning or ventilation. Weather records indicate that the outside air temperature in the Houston area that day reached 100 degrees.

Claimant testified that working in the heat triggered an acute asthma attack which put her in the hospital on August 19. The evidence indicates that a number of factors, including but not limited to the August 17 work environment, triggered the asthma attack. In any event, the attack was her most serious ever, and nearly caused her death. She was intubated, ventilated, and still doctors were unable to stabilize her condition for several days.

Claimant recovered from that attack and was released home, but has never returned to work at IBM. She worked another job for several months, thinking that a controlled environment would allow her to work, but she could not continue, and while she was working, she was not earning an amount equivalent to her pre-injury wage. Doctors have warned her against exposure to environmental hazards, and Claimant described graphically the everyday exposures that can and do cause her to have an acute asthma attack.

DISCUSSION

The August 17, 2000 claim was filed as a separate injury, but Claimant has never been sure whether it was in fact a new injury or just a flare-up of symptoms from her pre-existing condition. Despite the serious consequences of that asthma attack, there is insufficient evidence to show that there resulted new damage or harm to the physical structure of Claimant's body from the August 17 event. Therefore, even though Claimant proved that she timely

notified IBM about the occurrence, there is no new compensable injury.

Carrier alleges that Claimant recovered fully from the March 29 injury, and that any periods of time away from work after April 26, 2000 do not constitute disability. That contention is not consistent with Carrier's acceptance of an aggravation injury and with Claimant's evidence as to the long-term change in her condition after the March 29, 2000 event.

Since Claimant's asthma was aggravated by the March 29, 2000 injury, Carrier is liable for the consequences of such aggravation. The consequences include Claimant's inability to tolerate hot environments such as the one she was exposed to at work on August 17, 2000. That August 17 event was one of the triggers of the asthma attack that hospitalized Claimant on August 19, 2000, and has prevented her from returning to her pre-injury employment since that date.

Claimant has struggled mightily to find supporting evidence to show what she was exposed to on March 29, 2000 that caused the aggravation of her asthma. That is of no consequence, since Carrier has accepted an aggravation injury. Claimant's testimony as to the triggers for her asthma, and the differences in those triggers before and after the aggravation, is sufficient to tie the August 17, 2000 event to the ensuing asthma attack.

Claimant failed to prove that her chronic obstructive pulmonary disease (COPD) or any mental trauma injury stems from the March 29, 2000 injury. Claimant had a long history of depression and was taking Paxil prior to the March 29, 2000 injury. No professional has made an adequate statement of opinion as to how the compensable injury led to any mental trauma injury.

Dr. Gupta mentioned COPD after the March 29 injury and after the August 17 recurrence, did not think that the COPD was work related. No doctor has provided the necessary medical opinion to support such a tie.

Even though all of the evidence presented was not discussed, it was considered. The findings of Fact and Conclusions of Law are based on all of the evidence presented.

ATTORNEY FEES

Carrier was represented by an attorney at the hearing. A separate order on attorney fees may be issued.

FINDINGS OF FACT

The parties stipulated the following facts:

A. On March 29, 2000 and August 17, 2000, the Claimant was the employee of International Business Machines, Inc., Employer.
B. On March 29, 2000 and August 17, 2000, Employer had workers' compensation insurance with Liberty Mutual Insurance Company, Carrier.
C. Venue is proper in the Houston East Local Office of the Texas Workers' Compensation Commission.
D. Claimant sustained a compensable injury on March 29, 2000, and Carrier has accepted an aggravation of Claimant's chronic asthma.

The hearing officer found the following facts:

1. Claimant's asthma was a long-standing condition.
2. After the March 29, 2000 aggravation injury, Claimant was more susceptible to asthma attacks brought on by environmental factors such as heat, dust, and odors.
3. Claimant's work at Bank One on August 17, 2000 was a triggering factor for a severe asthma attack.
4. Claimant did not sustain new or additional damage or harm to the physical structure of her body due to the work environment on Augusts 17, 2000.
5. The alleged work injury of August 17, 2000 was reported to the employer within 30 days after August 17, 2000.
6. Claimant had chronic obstructive pulmonary disease prior to march 29, 2000, and it was not aggravated by the events of March 29 or August 17, 2000.

7. Claimant has been diagnosed with anxiety and depression.
8. Claimant's anxiety and depression were not caused or aggravated by the compensable injury on March 29, 2000.
9. Due at least in part to the injury of March 29, 2000, beginning March 30, 2000 and continuing through April 25, 2000, and again from August 19, 2000 through the date of this hearing, Claimant has been unable to obtain and retain employment at wages equivalent to her pre-injury wage.

CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction to hear this case.
2. Venue was proper in the Houston East Local Office.
3. The compensable injury of March 29, 2000 extends to chronic asthma but does not extend to chronic obstructive pulmonary disease or mental trauma.
4. Claimant had disability from the March 29, 2000 injury, from March 30, 2000 through August 25, 2000, and again from August 19, 2000 through the date of this hearing.
5. Claimant did not sustain a compensable injury on August 17, 2000, and therefore did not have a disability resulting from the claimed injury.
6. Carrier is not relieved of liability for the claimed injury of August 17, 2000, vecause it was timely reported.

DECISION

The compensable injury of March 29, 2000 extends to chronic asthma but does not extend to chronic obstructive pulmonary disease or mental trauma. Claimant had disability from the March 29, 2000 injury, from March 30, 2000 through April 25, 2000, and again from August 19, 2000 through the date of this hearing. Claimant did not sustain a compensable injury on August 17, 2000, and therefore did not have disability resulting from the claimed injury. Carrier is not relieved of liability for the claimed injury of August 17, 2000, because it was timely reported. Claimant is

entitled to temporary income benefits for all periods of disability through the date of maximum medical improvement. Accrued and past due income benefits shall be paid in a lump sum with interest.

ORDER

With respect to 00071055-01:
Carrier is ordered to pay medical and income benefits in accordance with this decision, the Texas Workers' Compensation Act and the Commission's Rules

With respect to X2153405-01:
Carrier is not liable for benefits and it is so ordered.

Signed this 30th day of April, 2003.

Steven R. Lynch
Hearing Officer

APPENDIX H

Durable Power of Attorney

I, Donna Gail Adams (the "Grantor)(Social Security Number 467-19-8758), residing at R. 5 Box 94A (CR 235), Alvin, Texas 77511, to provide for management of my (Grantor's) person, body, health, medical, legal and business affairs, in a more orderly fashion, and in accordance with my current health condition that can become "life threatening" if subjected to additional legal or work related stress, hereby declare as follows:

a. APPOINTMENT OF ATTORNEY IN FACT AND HEALTH CARE AGENT

I hereby make, constitute, and appoints ("Grant") Robert Lynn Hedrick, individually and as Managing Director of Parents For Family Court Justice (832-428-3150), their employees, consultants, attorney's and other consulting members at 7017 Almeda Rd. #292, Houston, Texas 77054, as my Agent(s)

b. POWERS OF AGENT

(1) I grant to my Agent all the powers and rights necessary to effect my wishes, solely for the purposes and objectives specifically set forth herein:

(2) I grant to my Agent full power and attorney to do, take, and perform each and every act and thing whatsoever requisite, proper, or necessary to be done, in the exercise of any of the rights and powers herein granted, necessary to carry out my wishes, and available under law to an Agent, acting in such capacity and for the purposes herein indicated. I grant my Agent the authority to act as fully, and for all reasons and purposes, as I might or could act if I were personally present and able including, the powers to, by way of example and not limitation, the following:

(3) To secure, on my behalf, all medical records, x-rays, admission records, treatment documents, notes, evaluations, recommendations, test results, worker's compensation records,

insurance records and any other correspondence related to my health condition and medical treatment to include, but not limited to written, taped, or computer media located in any location or in the possession of any individual. I grant my Agent full power and authority to take any legal action required to secure these records and to be present and represent me, as I might or could act if I were personally present, in any legal proceeding required to secure these records.

(4) To process all paperwork required to submit to the Social Security Administration a request for Social Security Disability Benefits as a result of my health condition. I grant my Agent full power and authority to take any legal action required to process this application and to be present and represent me, as I might or could act if I were personally present, in any legal proceeding required to secure these benefits.

(5) To represent me in all negotiations and conversations between myself and my employer International Business Machines (IBM), as I might or could act if I were personally present, concerning any Worker's Compensation Claims, Corporate Open Door Complaints, Sexual Harassment Complaints, Sexual Discrimination Complaints, Complaints to, but not limited to, Equal Employment Opportunity Commission, Fair Labor and Standards and any other local, state or federal entity. I grant my Agent full power and authority to take any legal action required to be present and represent me, as I might or could act if I were personally present, in any legal proceedings(s) required as a result of any of the above listed items.

(6) Work related stress could cause further **"life threatening"** conditions for me with my current health condition. I hereby direct that all verbal and written contact by my employer, his employees, attorneys or assigns, in regard to the items listed in (5 above) be processed through my agent and not directly to me. This includes telephone conversations, conferences, meetings or any other method of contact or communication that might cause **"life threatening"** stress. This does not include normal daily operational communications requirements. I grant my Agent full power and authority to take any legal action required to insure that

this directive is adhered to and to represent me, as I might or could act if I were present, in any legal proceeding(s) required to enforce the removal of **"life threatening"** stress as a results of my having exercised my rights as an employee of IBM.

(7) To give or without consent to any medical procedure, test, or treatment, including surgery, to the extent permitted in accordance with my religious preference set forth in my Living Will, if any. To arrange for my hospitalization, convalescent care, hospice, or home care. To summon paramedics or other emergency medical personnel and seek emergency treatment for me. To withdraw, modify, or change consent to any medical procedure, test, and treatment, hospitalization, convalescent care, hospice, home care or other treatment that either I or my Agent may have arranged.

(8) To order whatever is appropriate to keep me as comfortable and free of pain as is reasonably possible, including the administration of pain-relieving drugs, surgical or medical procedures calculated to relieve my pain, unconventional pain-relief therapies that my Agent believes may be helpful.

(9) May Agent shall be able to sign, execute, deliver, and acknowledge any contract or other document that may be necessary, desirable, or convenient, or proper in order to exercise any of the powers described in this **Durable Power of Attorney** and to incur reasonable costs in the exercise of any such powers.

(10) To request, receive, and review any information regarding my medical, physical, mental health, including but not limited to hospital records, and to execute any release or other documents that my be required in order to obtain such information and to disclose such information to such persons, organizations, and others as my Agent shall deem appropriate.

(11) To request, receive, and review any information regarding my employment with International Business Machines (IBM) including but not limited to personnel records, evaluations, complaints, job descriptions, policies and procedures, and to execute any release or other documents that may be required in order to obtain such information and to disclose such information

to such persons, organizations, and others as my Agent shall deem appropriate.

(12) Legal Actions – Settle, adjust, compromise, or submit to arbitration any accounts, claims, debts, demands, disputes, or other matters between Grantor and any other person or entity, or which concern any property, right, title, interest, or estate. Begin, prosecute, enforce, abandon, defend, or settle all claims or judicial or administrative proceedings.

(13) Social Security and Government Benefits - Apply to any government agency for any benefit or government obligation to which Grantor may be entitled.

c. APPROVAL

Grantor hereby approves and confirms all acts performed by Grantor's Agent on Grantor's behalf. Grantor hereby ratifies and confirms all that the Agent shall do or cause to be done, by virtue of this Power of Attorney.

d. DURABLE POWER – DISABILITY DOES NOT AFFECT GRANT

This Power of Attorney shall not be affected by Grantor's subsequent disability as principal. Grantor does hereby so provide, it being Grantor's intention that all powers conferred upon the Agent herein shall remain at all times in full force and effect, notwithstanding Grantor's subsequent incapacity, disability, or any uncertainty with regard thereto.

e. ADDITIONAL POWERS

In addition to, and not by way of limitation upon, any other powers conferred upon Grantor's Agent herein, Grantor grants to the Agent full power and authority to do, take, and perform each and every act and thing whatsoever requisite, proper, or necessary to be done in the exercise of any of the rights and powers herein granted, or available under law to any Attorney-in Fact, as fully to all intents and purposes as Grantor might or could do if personally

present, with full power of substitution or revocation, hereby ratifying and confirming all that said Agent shall lawfully do or cause to be done by virtue of this Power of Attorney and the rights and powers herein granted.

f. THIRD PARTY RELIANCE

Third parties may rely upon the representations of the Agent for all matters relating to any power granted to the Agent, and no person who may act in reliance upon the representations of the Agent or the authority granted to the Agent shall incur any liability to the Grantor or Grantor's estate as a result of permitting the Agent to exercise such power. Any third party may rely on a duly executed counterpart of this instrument, or a copy thereof, as fully and completely as if such third party had received the original of this instrument. Any third party may rely on the authority of any Alternate Agent when such Alternate Agent presents an original executed copy of this Power of Attorney. Such third party need not request proof, other than an affidavit of the Alternate Agent, under oath, that any prior named Agent is unable or unwilling to serve in such capacity.

g. TERMINATION OF GRANT

Revocation of Power by Grantor: "This Power of Attorney is not coupled with an interest and there is no agreement between Grantor and the Agent or Alternate Agent(s) limiting or restricting in any manner Grantor's right to revoke this Power of Attorney. In addition to any other method permitted by law Grantor may revoke this Power of Attorney by destroying all executed copies of this Power of Attorney, or revoke the power granted to any one or more of the Agent(s) or Alternate Agent(s)by giving written notice to such Agent or Alternate Agent via certified mail return receipt requested, overnight courier, or hand delivery, at the address set forth herein for such Agent or Alternate Agent(s), unless Grantor has knowledge that such Agent or Alternate Agent(s) has a different address.

Termination by Disability or Death of Agent: The Grant of this Power of Attorney to any Agent shall terminate upon such Agent's subsequent disability or death.
Resignation of Agent: Any Agent may resign by providing written notice to Grantor (or Grantor's guardian or committee) with copy to the next named Agent or a court of competent jurisdiction.

Validity of Acts Following Revocation: Any act of the Agent between the revocation of this Power of Attorney and notice of that revocation to the Agent shall be valid unless the Agent, or other person claiming the benefit of the act, had actual knowledge of that revocation.

Affidavit Sufficient Proof for Third Party: It shall be sufficient proof for any third party relying on this document, if such third party has no actual knowledge of the termination of this agreement (without any duty of inquiry being imposed on such third party), that the Agent shall provide an affidavit that this Power of Attorney has not terminated under oath.

h. CONSTRUCTION

This instrument is to be construed and interpreted as a durable general power of attorney. The enumeration of specific items, rights, acts, or powers herein is not intended to nor does it limit or restrict, and is not to be construed or interpreted as limiting or restricting, the general powers herein granted to the Agent.

This instrument is executed in the state of Texas, and the laws of State shall govern all questions as to the validity of this power and the construction of its provisions. It is Grantor's intention, however, that this Power of Attorney be exercisable in any other state or jurisdiction in which Grantor may at the time have property, business, or other dealings.

Should any provision or power in this document not be enforceable, such enforce ability shall not affect the enforce ability of the rest of this document.

Captions, titles, and section numbers (and letter designations) are inserted for convenience only and should not be read to broaden or limit the scope of any provision. Gender, singular or plural, shall be interpreted as the context requires.

i. STATE LAW

This instrument is delivered in State of Texas, and the laws of the State of Texas shall govern all questions as to the validity of this power and the construction of its provisions. The Agent is, notwithstanding anything herein to the contrary, granted the right to exercise of any of the rights and powers available under the laws of the State of Texas. This power of attorney shall not be affected by disability of the principal. This provision shall be interpreted in the broadest terms so as to remain in effect throughout Grantor's disability to the fullest extent provided for under the laws of the State of Texas.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 2nd day of October, 2000. acknowledging that I have read and understand the powers and rights herein granted and that Grantor voluntarily shoes to make the Grant.

Signed
Donna Gail Adams
Grantor/Principal

WITNESS: **Signed** **Signed**
Jackie D. Barber **Linda Logsdon**

STATE OF TEXAS)
)
)
COUNTY OF BRAZORIA)

On this 2 day of October, 2000, I, a Notary Public in the State of Texas, certify that before me personally appeared Donna Gail Adams, who resides at Rt. 5, Box 94A (CR235), Alvin, Texas, 77511, and who I am satisfied is the person named in and who

executed the within Power of Attorney, and who acknowledged under oath, ant to my satisfaction, that the execution of the Power of Attorney by Grantor was done voluntarily for the uses and purposes therein expressed, and that Grantor, signed, sealed, and delivered the Power of Attorney as Grantor's act and deed. The execution of this Power of Attorney by the Grantor was done in my presence and in the presence of both witnesses above, each of whom signed their names in my presence and in Grantor's presence.

Signed

Notary Public, State of Texas
My commission expires 10/14/2003

PAMELA KAYE TRACY
Notary Public, State of Texas
My Commission Expires
October 14, 2003

APPENDIX I

TO: United States District Court
Southern District of Texas
Houston Division
515 Rusk Street
Houston, TX 77002

FR: Sphuler Medical Associates, PA
401 East Parkwood
Friendswood, TX 77546 May 4, 2005

Re: Medical Condition of Donna Adams (Hedrick)

I am the primary medical provider for Donna Adams (Hedrick). It is my understanding that there will be a series of court hearings held in the United States District Court at which Donna Adams (Hedrick) will be required to attend.

Donna's medical condition is such that a serious asthma attack can be "triggered" by her being exposed to perfumes, after shave lotions, candle fragrances, excessive heat and stifling conditions.

I do not recommend Donna be present at any hearing or meeting to be held in the confines of offices or judges chambers that is not large enough for her to be able to isolate herself from the above items that could trigger a serious asthma attack. Her having to attend hearings in such a place can be very detrimental to her health condition and could result in a serious asthma attack.

Sincerely,

Wanda P. Sphuler, MD

APPENDIX J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LIBERTY MUTUAL I INSURANCE COMPANY PLAINTIFF/CROSS DEFENDANT	§	*FILED Jun 2, 2005*
V.	§	
DONNA ADAMS DEFENDANT	§	NO. H-05-1974
ROBERT HEDRICK GRANTEE UNDER POWER OF ATTORNEY; NEXT BEST FRIEND; SPOUSE; INTERVENOR	§	Case # 25628-1 Removed From 239th Judicial District Court Brazoria County, TX

DEFENDANT'S MOTION TO RECOGNIZED "NEXT BEST FRIEND"
MOTION TO RECOGNIZE STANDING UNDER POWER OF ATTORNEY
OR IN LIEU OF
MOTION FOR APPOINTMENT OF GUARDING AD LITEM

A. Introduction

1. Plaintiff is LIBERTY MUTUAL INSURANCE COMPANY; DEFENDANT IS DONNA ADAMS. Robert Hedrick is the spouse of Donna Adams, her next best friend, and has been granted Power of Attorney out of medical necessity to represent Donna Adams (as if he were, in fact Donna Adams) under legally executed power of attorney under the laws of the State of Texas and has sued in his capacity of "NEXT BEST FRIEND".
2. On August 21, 2003 plaintiff sued defendant to set aside the final decision and award of Workers' Compensation Commission of the State of Texas, filed on July 14, 2003 under Commission

number HE-00071055-02-CC-HD48 styled Donna Adams, Claimant, v. Liberty Mutual Insurance Company, Carrier.
3. Donna Adams Hedrick is represented by Robert Hedrick as next best friend.

B. Argument

4. The court has the authority to appoint a guardian ad litem to protect the interests of minors and incompetents. See Fed. R. Civ. P. 17 (c).
5. Robert Hedrick has been granted authority under Power of Attorney properly executed under the laws of the State of Texas out of medical necessity **(Exhibit A).** Robert Hedrick has sued as "next best friend" on behalf of Donna Adams Hedrick. Liberty Mutual Insurance Company has objected to this.
6. Donna Adams Hedrick is medically incompetent to not only defend herself, but medically incompetent to attending hearings or even trials. Her medical condition is outlined by Wanda P. Spuhler, MD in a letter to the court on May 4, 2005 **(Exhibit B).** The risks to Donna Adams Hedrick and potential life threatening asthma attacks will in the courtroom, regardless of size of the room are not worth chancing when she has consented to "next best friend" representation or appointment of Robert Hedrick as her guardian ad litem. The court runs a considerable risk of liability for any fatal asthma attack that could occur should Donna Adams Hedrick be required to subject herself to the atmosphere or stress of hearings or extended trial before the court. In so much, as she has consented to Robert Hedrick suing on her behalf as next best friend, grantee under power of attorney or even as court appointed guardian ad litem this court has an obligation to recognize one of these capacities.
7. To maintain a suit in federal court, a minor or incompetent must be represented by a competent adult. Fed. R. Civ. P. 17(c); *Enk v. Brophy,* 124 f.3D 893, 895 (7TH Cir. 1997. Donna Adams Hedrick is represented by Robert Hedrick, a competent adult. This court has a mandate to insure that Donna Adams Hedrick receives a fair trial. This court has three choices:

A. Recognize the status of Robert Hedrick as Next Best Friend and his right to sue on behalf of Donna Adams Hedrick.

B. Recognize the status of Robert Hedrick to sue on behalf of Donna Adams Hedrick in his capacity as granted under Power of Attorney due to medical necessity.

C. Appoint Robert Hedrick as Guardian Ad Litem for Donna Adams Hedrick with full rights to sue on her behalf.

C. Conclusion

8. Donna Adams Hedrick is medically incompetent to attend or represent herself before the court and risks bodily injury to attend hearings or even to attend a prolonged trial. She has consistently approved and requested that Robert Hedrick represent her. For these reasons Donna Adams Hedrick asks the court to recognize Robert Hedrick as her "Next Best Friend". Grantee under Power of Attorney or in lieu of these appoint Robert Hedrick as her Guardian Ad Litem on the courts order and without hearing.

9. Donna Adams Hedrick asks the court to extend this to apply to state court as well as federal court.

Respectfully submitted,

Donna Adams-Hedrick
16718 Bougainvilla
Friendswood, TX 77546
281-648-1296

Robert Hedrick
16718 Bougainvilla
Friendswood, TX 77546
281-648-1296

6-2-05

APPENDIX K

TO: United States District Court
Southern District of Texas
Houston Division
515 Rusk Street
Houston, TX 77546

FR: Sphuler Medical Associates, PA
401 East Parkwood
Friendswood, TX 77546 July 20, 2005

Re: Medical Condition of Donna Adams (Hedrick)

I am the primary medical provider for Donna Adams (Hedrick). It is my understanding that there will be a series of hearings held in the United States District Court including one scheduled for 7-15-05 at 11:00 a.m. at which Donna Adams (Hedrick) will be required to attend.

Donna's medical condition is such that a serious asthma attack can be "triggered" by her being exposed to perfumes, after shave lotions, candle fragrances, excessive heat and stifling conditions.

I do not recommend Donna to be present at any hearings or meetings to be held in conditions where any of these threats may be present. She would need to be able to isolate herself from exposure to these things. I would recommend that if possible her participation be done by telephone or other remote means. Attending any hearings where she would be exposed to any of the items listed above could trigger an asthma attack would be very detrimental to her health condition and could results in a serious asthma attack.

Wanda P. Spuhler, MD

APPENDIX L

NO. 25628

LIBERTY MUTUAL INSURANCE COMPANY	§IN THE DISTRICT COURT §
Plaintiff,	§BRAZORIA COUNTY, §TEXAS
VS.	§ 239TH JUDICIAL DISTRICT §
DONNA ADAMS,	§
Defendant	§JURY TRIAL REQUESTED

DEFENDANT'S MOTION FOR APPOINTMENT OF GUARDIAN AD LITEM AND MOTION FOR CONTINUANCE TO RESPOND TO DISCOVERY AND OTHER MOTIONS

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant **Donna Adams** asks the court to appoint a guardian ad litem in this case, under the authority of Texas Rules of Civil Procedure 173.

A. Introduction

1. Plaintiff is Liberty Mutual Insurance Company; Defendant is Donna Adams.

2. Plaintiff sued defendant to set aside the final decision and award of the Workers' Compensation Commission of the State of Texas filed on July 14, 2003.

3. Donna Adams, the defendant in this suit, is not represented by a guardian or next friend.

4. The court should appoint a guardian ad litem in this case because defendant is an incapacitated person, is severely ill and under medical care, taking numerous medications which affect her ability to think clearly, and is incapable of representing her own interests.

5. It is my wish that the court appoint my husband, Robert Lynn Hedrick to whom I have granted my power of attorney on October 2, 2000(Exhibit A), who is my best friend and who represented my interests before the Texas Workers' Compensation Commission which found in my favor as my guardian ad litem.

B. Facts

6. Texas Workers' Compensation Commission (hereinafter referred to as TWCC)records indicate that on March 29, 2000 I was injured at a 24 Hour Fitness Center in Houston, Texas while performing installation of computers for my employer International Business Machines (IBM). The 24 Hour Fitness center was under construction and contractors were sanding Formica and particle board counters some of which had been glued using epoxy resin glue. Conclusive evidence was submitted to the TWCC and included in the records of the final review hearing that Formica and particle board is primarily made up of formaldehyde, which according to OSHA and the Centers for Disease Control (CDC) is hazardous and life threatening to persons with asthma.

7. **OSHA Directive,CPL 2-2.52 Enforcement Procedure for Occupational Exposure to Formaldehyde** (Exhibit B) indicates:

6 2. Formaldehyde Exposure.

a. Formaldehyde Exposure can occur in three ways:

"(1) Exposure to liquid or solid formaldehyde (Para formaldehyde) and the accompanying vapors;

(2) Exposure to formaldehyde during primary processing of formaldehyde resins and other chemicals manufactured from formaldehyde; and

(3) **Exposure to formaldehyde released from products that contain formaldehyde-based resins."**

I was exposed in the third manner.

OSHA goes on to state:

"c. Occupational exposure to formaldehyde occur when a finished product contains residual formaldehyde or when hydrolysis—that is, the chemical break-down of formaldehyde-containing materials to produce formaldehyde gas prompted by warm and humid work environments—occurs. The EPA has described this phenomenon as "pseudo consumptive use" of formaldehyde; i.e., chemical identity is changed but not

irreversibly. Examples of "Pseudo consumptive" uses are: (1) urea formaldehyde resins in fiberboard, particle board, plywood, laminates, urea formaldehyde foams and insulation products, molding compounds, and

protective coatings...."

8. MSDS sheets submitted to the TWCC indicate that after ingestion of formaldehyde degenerative changes may be found in the **liver, kidneys, heart and brain.**

9. Plaintiff, Liberty Mutual Insurance Company, accepted the exposure to formaldehyde injury as a compensatable, work related injury, a fact that is not in contest in this court.

10. Evidence was also submitted at the final hearing of the TWCC that when a person is exposed to formaldehyde and in particular **"dust laden"** particles containing formaldehyde they become "sensitized" to "triggers" that cause an asthma attack which did not cause an asthmatic reaction prior to that exposure.

11. My medical records show that exposure to heat and cold cause an asthma attack. My medical records indicate that exposure to perfumes, candle smells and after shave lotion and colognes cause me to have an asthma attack.

12. My medical records and evidence submitted at the final hearing of the TWCC indicate that I was exposed to excessive heat on August 17, 2000 while at a Bank One doing a job for IBM. The TWCC ruled that the resulting injury on August 17, 2000 aggravated the previous injury on March 29, 2000.

13. In the months following these injuries I have attempted to go back to work without success. My medical condition since the injury and aggravation of the injury has resulted in more medical treatment and hospitalization.

14. During the last week of August 2003 I accepted a position with Target located on Bay Area Blvd. in the produce department thinking that it was a job that I could do.

15. On October 10, 2003 my job required me to go in and out of the walk in cooler for most of the day.

16. At 4:30 p.m. I had a severe asthma attack brought on by the exposure to the cold (sensitized by the formaldehyde exposure) and was rushed to the emergency room at Clear Lake Regional where I was hospitalized until October 14, 2003.

17. Since that date I have been required to remain at home while numerous medical tests have been completed. I am not able to return to work.

18. I am now under the care of:

Dr. Wanda P. Spuhler

401 E. Parkway

Friendswood, TX 77546

(281)648-4900

19. On November 7, 2003 I had ex-rays taken, blood tests, breathing tests, sputum and urine tests done which indicated lung and liver problems. On November 11, 2003 I had a CAT SCAN and breathing tests which indicated that I had more lung damage resulting from the hospitalization. The blood tests indicated liver injuries that are now being evaluated by more tests.

20. As previously discussed liver injuries are indicative of **formaldehyde ingestation.** I now may have severe liver damage. The worries associated with this aspect of my worsening medical condition makes it difficult for me to concentrate on any of the legal issues at a time I am worried about possible "liver and lung failure".

21. As a result of my medical condition, hospitalization and uncertainty of my future I have been physically unable and mentally unable to represent myself, respond to motions for discovery or motion to abate.

22. Accordingly, to protect my rights to due process I would request that the court appoint my husband to represent me and allow 60 days for him to respond on my behalf to motions for discovery and any other motions to which I have been medically unable to respond.

23. I am now taking numerous medications some of which cause severe drowsiness, dizziness, nausea, or other side effects that make it impossible for me to concentrate on my legal defense. (Exhibit C)

C. Argument & Authorities

23. A court has the authority to appoint a guardian ad litem to safeguard the interests of an incapacitated person.

24. A court should appoint a guardian ad litem if an incapacitated person is named as the defendant in the lawsuit and does not have a guardian within the State of Texas. Tex. R. Civ. P. 173. Because Donna Adams does not have an appointed guardian within this state, it is necessary that this court appoint a guardian ad litem to protect and represent her interest in this case.

D. Conclusion

25. Based upon my current physical, medical and mental condition and the doubts that are present as to my capacity to represent myself or to even attend hearings the court should grant my request for the appointment of my husband as my guardian ad litem and grant an extension of time of 60 days for him to respond to any current motions that I have not been able to respond to.

E. Prayer

26. For these reasons, Defendant Donna Adams asks the court to appoint Robert Hedrick as guardian ad litem for Donna Adams, grant the extension of time I have requested and order a reasonable fee to be paid to the guardian ad litem.

Dated this 17th day of November, 2003
Respectfully submitted,

Donna Adams

APPENDIX M
NO. 25628

LIBERTY MUTUAL INSURANCE COMPANY	§	IN THE DISTRICT COURT
Plaintiff,	§	BRAZORIA COUNTY, TEXAS
VS.	§	239TH JUDICIAL DISTRICT
DONNA ADAMS,	§	
Defendant	§	JURY TRIAL REQUESTED

OBJECTION TO ORAL HEARING SCHEDULED FOR MONDAY, January 26, 2002 at 1:00 p.m. on PLAINTIFF'S MOTION TO SEVER; MOTION TO ABATE

REQUEST FOR CONTINUANCE ON PLAINTIFF'S MOTION TO SEVER; MOTION TO ABATE UNTIL HEARING AND RULING ON DEFENDANT'S MOTION FOR CONTEMPT; MOTION FOR SANCTIONS; MOTION TO COMPEL; MOTION FOR FINDING OF "BAD FAITH" ACTION; MOTION TO DISQUALIFY TOMMY L. SMITH
AND
REQUEST FOR DEFAULT ORDER (WITHOUT HEARING) ON DEFENDANT'S MOTION FOR APPOINTMENT OF GUARDIAN AD LITEM AND
MOTION FOR CONTINUANCE TO RESPOND TO DISCOVERY AND OTHER MOTIONS

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant **Donna Adams objects** to the scheduling of an oral hearing by Plaintiff's for Monday, January 26, 2004 at 1:00 p.m. and requests that the court grant a continuance on Plaintiff's Motion for Severance and Abatement until such time as the following motions filed by Defendant are heard and ruled upon:

1. Defendants MOTION FOR CONTEMPT filed on November 10, 2003;

2. Defendants MOTION FOR SANCTIONS filed on November 10, 2003;
3. Defendants MOTION TO COMPEL filed on November 10, 2003;
4. Defendants MOTION FOR FINDING OF "BAD FAITH" ACTION filed on November 10, 2003;
5. Defendants MOTION TO DISQUALIFY TOMMY L. SMITH filed on November 10, 2003;
6. Defendants MOTION FOR APPOINTMENT OF GUARDIAN AD LITEM AND MOTION FOR CONTINUANCE TO RESPOND TO DISCOVERY AND OTHER MOTIONS filed on November 10, 2003.

Defendant objects to the oral hearing scheduled by Plaintiff and the court on January 26, 2004 at 1:00 p.m. for the following reasons:

A. Defendant has advised the court that she is not physically, mentally or intelligently able to defend herself before this court and has appropriately requested that the court appoint her husband Robert L. Hedrick as her GUARDIAN AD LITEM to represent her. Any hearing on any matter prior to appointment of competent representation constitutes a **"denial of my constitutionally guaranteed due process rights"** to competent representation before the court. The court has been advised that I am not competent to represent myself nor am I able to attend the hearings unless the court takes extensive medical steps to eliminate any exposure to harmful smells, perfumes or other odors.

2. I have filed a Motion for Contempt against Defendant Liberty Mutual Insurance Company for failure to comply with a court order. If found in contempt of the orders of the TWCC hearing officer defendant would also have acted in "Bad Faith"; upon which finding Plaintiffs Motion for Severance/Motion to Abate becomes moot as the court would also have to concede that defendant committed an intentional tort by denying medical care (without due cause and in "bad faith") during the course of the medical treatment of Donna Adams-Hedrick. This is a criminal matter that under Government Code § 21.002 the lawyer (in this case Tommy L. Smith) and the party (Liberty Mutual Insurance Company) may face confinement up to 6 months or fine up to $500 or both. The courts have consistently held that criminal matters

before a court must be heard prior to proceeding with any further civil matters. Failure to due so would again result in **"denial of constitutional guarantees"** to a fair trial.

3. I cannot attend the hearing on January 26, 2004 due to my health condition and even if the court were to grant approval of Robert Hedrick as GUARDIAN AD LITEM or allowed him to represent me as "next best friend" or under the "power of attorney" that I have granted to him; he will not be in the State of Texas from January 22 to January 31. He is scheduled to be in Chicago and in Washington D.C. during these dates on business and cannot be available. The first available dates for any hearing in which he could attend would be February 4 to February 14, 2004.

Prayer

Defendant prays that the court issue a continuance on Plaintiffs Motion for Severance/Motion to Abate until the court rules on all of Defendants Motions. Defendant prays that the court grant Defendants MOTION FOR APPOINTMENT OF GUARDIAN AD LITEM AND MOTION FOR CONTINUANCE TO RESPOND TO DISCOVERY AND OTHER MOTIONS filed on November 10, 2003 **without hearing** (Order Attached). Plaintiffs have filed no objection to the Motion filed by Defendants for the appointment of Robert Hedrick as Guardian Ad Litem or Motion for Continuance to Respond to Discovery and Other Motions.

Dated this 12th day of December, 2004
Respectfully submitted,

_____

Donna Adams-Hedrick
17825 Kings Park Ln. #817
Houston, TX 77058

(3)

No. 06-913

FILED
MAR 6 - 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

DONNA ADAMS-HEDRICK, *et vir.*,

Petitioners,

v.

LIBERTY MUTUAL INSURANCE COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

MARY M. MARKANTONIS
DEAN G. PAPPAS & ASSOC., P.C.
10375 Richmond, Suite 1670
Houston, Texas 77042
(713) 914-6200

Attorneys for Respondent

207135

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

Petitioners appealed the District Court's Order of Remand and Order granting attorney's fees to Liberty Mutual and sanctioning Petitioners. They further appeal the Fifth Circuit's dismissal for lack of jurisdiction based on 28 U.S.C. § 1447(d), *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149, 150-153 (1908) and *Sitton v. United States*, 413 F.2d 1386, 1389 (5th Cir. 1969), affirming of the non-monetary and monetary sanctions and award of statutory attorney's fees against Petitioners, and granting of costs and damages to Liberty Mutual pursuant to Fed. R. App. Proc. 38 and 28 U.S.C. § 1912. Petitioners attempt to interject non-existent constitutional issues of a right to be represented in court by a non-attorney having no basis in Liberty Mutual's original petition for judicial review of a final workers' compensation administrative decision filed in the Texas state court. The only questions for review are:

1. Whether an Order of a District Court remanding on the basis of 28 U.S.C. § 1447(c) is reviewable by the Court of Appeals.

2. Whether the District Court abused its discretion in awarding statutory attorney's fees and sanctions against the Petitioners.

3. Whether the Court of Appeals abused its discretion in awarding costs and damages against the Petitioners.

STATEMENT PURSUANT TO RULE 29.6

Respondent, Liberty Mutual Insurance Company, has no parent corporation and no publicly held company owns 10% or more of its stock.

TABLE OF CONTENTS

	Page
COUNTERSTATEMENT OF THE QUESTIONS PRESENTED	i
STATEMENT PURSUANT TO RULE 29.6	ii
TABLE OF CONTENTS	iii
TABLE OF CITED AUTHORITIES	vi
JURISDICTION	1
SUMMARY OF REASONS TO DENY PETITION	1
STATEMENT OF THE CASE	2
A. Nature of the case	2
B. Proceedings below	3
1. Ms. Adams' work related injuries and workers' compensation claims	3
2. Federal court litigation history	5
3. This lawsuit	7
REASONS FOR DENYING THE PETITION	10
I. Appellate review of remand orders is barred by 28 U.S.C. § 1447(d).	10

Contents

Page

A. Alternatively, without waiving the foregoing, Petitioners did not follow the proper procedure to remove this case. .. 11

1. Petitioners' Notice of Removal was untimely filed 11

2. Respondent's Motion for Remand was timely filed 14

3. Petitioners' Notice of Removal based upon their own cause of action ... 14

4. Petitioners attempted to remove abated state court case 15

B. Lack of jurisdiction 15

II. There was no abuse of discretion in awarding or affirming the award of statutory attorney's fees to Liberty Mutual the prevailing party in a removal action and sanctioning the Petitioners because such an award is authorized by 28 U.S.C. § 1447(c) when there is no objectively reasonable basis for seeking removal and Petitioners violated Rule 11 of the Federal Rules of Civil Procedure. 17

A. Attorney's Fees 17

B. Sanctions 19

1. Non-monetary sanctions 21

2. Monetary sanctions 24

Cited Authorities

Page

III. The Court of Appeals for the Fifth Circuit did not abuse its discretion in awarding Liberty Mutual costs and damages for attorney's fees because the Petitioners lacked an objectively reasonable basis for seeking removal and their appeal was frivolous and caused unnecessary delay and expense. Fed. R. App. Proc. 38. . . . 15

A. Lack of objectively reasonable basis . . 25

B. Petitioners' appeal was frivolous. 25

CONCLUSION 26

TABLE OF CITED AUTHORITIES

Page

Cases:

Ankrom v. Dallas Cowboys Football Club, Ltd., 900 S.W.2d 75 (Tex. App.-Dallas 1995, *writ denied*) 4

Baron v. Strassner, 7 F. Supp. 871 (S.D. Houston 1998) 16

Blackmore v. Rock-Tenn Co., 756 F. Supp. 288 (N.D. Tex. 1991) 15-16

Brown v. Demco, Inc., 792 F.2d 478 (5th Cir. 1986) 13

Business Guides, Inc. v. Chromatic Communications Enterprises, Inc., 498 U.S. 533 (1991) 23

Caterpillar, Inc. v. Williams, 482 U.S. 386, 107 S. Ct. 2425, 96 L. Ed. 2d 318 (1987) 16

Certain Underwriters at Lloyd's v. Bristol-Myers Squibb Co., 51 F. Supp. 2d 756 (E.D. Tex. 1999) 15

Cervantes v. Tyson Foods, Inc., 130 S.W.3d 152 (Tex. Civ. App.—El Paso 2003) 4

Chambers v. NASCO, Inc., 501 U.S. 32 (1991) ... 22

Cooter & Gell v. Hartmarx Corp., 496 U.S. 384 (1990) 19-20, 21

Cited Authorities

	Page
Denton v. Hernandez, 504 U.S. 25, 112 S. Ct. 1728 (1992)	25
ESIS, Inc., Servicing Contractor v. Johnson, 908 S.W.2d 554 (Tex. Civ. App.—Fort Worth 1995)	17
Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005)	16
Galloway v. Louisiana, 817 F.2d 1154 (5th Cir. 1987)	21
Gravitt v. Southwestern Bell Telephone Co., 430 U.S. 723 (1977)	10
Gully v. National Bank, 29 U.S. 109, 57 S. Ct. 96, 81 L. Ed. 70 (1936)	16
Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974)	18, 19
Kircher v. Putnam Funds Trust, 546 U.S. __, 126 S. Ct. 2145 (2006)	10, 11
In re Louisiana-Pacific Corp., 112 S.W.3d at 188	4
Louisville & Nashville R. Co. v. Mottley, 211 U.S. 149 (1908)	10
Lumbermens Mut. Cas. Co. v. Garza, 777 S.W.2d 198 (Tex. Civ. App.—Corpus Christi 1989)	15

Cited Authorities

Page

Martin v. Franklin Capital Corporation, 546 U.S. 132, 126 S. Ct. 704 (2005) 18

Mason City & Fort Dodge Railroad Co. v. Boynton, 204 U.S. 570, 27 S. Ct. 321 (1907) 15

Neitzke v. Williams, 490 U.S. 319, 109 S. Ct. 1827 (1989) 24, 25

Scott v. Communications Services, Inc., 762 F. Supp. 147 (S.D. Tex. 1991), *aff'd*, 961 F.2d 1571 (5th Cir. 1992) 15

Simpson v. State, 998 S.W.2d 304 (Tex. Civ. App.—Austin 1999) 17

Thermtron Products, Inc. v. Hermandsdorfer, 423 U.S. 336 (1976) 10

Things Remembered, Inc. v. Petrarca, 516 U.S. 124 (1995) 10

Thomas v. Capital Security Services, Inc. 836 F.2d 866 (5th Cir. 1988) 23

Willy v. Coastal Corp., 855 F.2d 1160 (5th Cir. 1988) 13

Willy v. Coastal Corp., 503 U.S. 131 (1992) 12, 21

Cited Authorities

Page

Statutes:

18 U.S.C. § 24 7

18 U.S.C. § 241 ..... 7, 24

18 U.S.C. § 242 ..... 7, 24

18 U.S.C. § 371 ..... 7, 24

18 U.S.C. § 1035 7

18 U.S.C. § 1347 7

18 U.S.C. § 1512 ..... 7, 24

28 U.S.C. § 1445(c) 15, 25

28 U.S.C. § 1446 1

28 U.S.C. § 1447 1

28 U.S.C. § 1446(a) 11, 14

28 U.S.C. § 1447(b) 11, 12, 13

28 U.S.C. § 1447(c) 11, 17

28 U.S.C. § 1447(d) 1, 10, 25, 26

28 U.S.C. § 1254(1) 1

42 U.S.C. § 1981 7

Cited Authorities

	Page
42 U.S.C. § 1983	7
42 U.S.C. § 1985	7
Tex. Gov't Code § 81.102(a)	9
28 Tex. Admin. Code § 150.3(a)(3)	4, 9
Tex. Lab. Code § 401.011(37)	9
Tex. Lab. Code § 402.001	3
Tex. Lab. Code § 402.061	3
Texas Lab. Code § 402.071	9
Tex. Lab. Code § 405.001(a)	17, 25
Tex. Lab. Code Ann. § 410.104	4
Tex. Lab. Code Ann. §§ 410.151-410.169	4
Tex. Lab. Code Ann. § 410.169	17
Tex. Lab. Code Ann. §§ 410.201-410.208	4
Tex. Lab. Code Ann. §§ 410.251- 410.308	4
Tex. Lab. Code Ann. §§ 410.024, 410.169, 410.205	4
Tex. Lab. Code § 410.252(b)(1)	4

Cited Authorities

Page

Rules:

Fed. R. App. Proc. 38 ..... 2, 25

Fed. R. Civ. Proc. 11 19

Fed. R. Civ. P. 11(b)(2) 22

Fed. R. Civ. P. 11(c)(2) 23

Fed. R. Civ. Proc. 54(d)(2) 17

JURISDICTION

The United States Court of Appeals for the Fifth Circuit issued its Order dismissing Adams' and Hedrick's *pro se* appeal to that court on September 15, 2006. On November 16, 2006, Adams and Hedrick, *pro se*, initially filed their Petition for Writ of Certiorari and it was docketed on or about January 6, 2007. Respondent respectfully submits that this Court lacks and the Fifth Circuit Court of Appeals lacked jurisdiction to review the District Court's Order of Remand granted on the basis of a timely raised defect in removal or lack of subject matter jurisdiction, pursuant to 28 U.S.C. §§ 1446 & 1447, and should dismiss the petition as to those questions. Respondent further submits that this Court does have jurisdiction to review the District Court's order granting Liberty Mutual's statutory attorney's fees and sanctioning Petitioners and the orders of the Court of Appeal for the Fifth Circuit affirming the District Court's order on attorney's fees and sanctions and granting the Respondent's motion for costs and damages, all pursuant to 28 U.S.C. § 1254(1).

SUMMARY OF REASONS TO DENY PETITION

I. Pursuant to 28 U.S.C. § 1447(d), the United States Court of Appeals for the Fifth Circuit did not have jurisdiction to review a dismissal of an appeal of an Order of Remand based upon defects in the removal procedure or lack of jurisdiction, even if erroneously granted.

A. Alternatively, without waiving the foregoing, Petitioners did not follow the proper procedure to remove this case from state court to District Court.

B. Alternatively, without waiving the foregoing, the District Court had no jurisdiction of this case.

II. The District Court did not abuse its discretion in awarding statutory attorney's fees to Liberty Mutual and granting monetary and non-monetary sanctions against Petitioners, and the Court of Appeals for the Fifth Circuit did not abuse its discretion in affirming same, because Petitioners lacked an objectively reasonable basis for seeking removal, Petitioners' conduct during the course of this case up to July 25, 2005, violated Rule 11 of the Federal Rules of Civil Procedure and Liberty Mutual was the prevailing party in the case.

III. The Court of Appeals for the Fifth Circuit did not abuse its discretion in awarding Liberty Mutual costs and damages because Petitioners lacked an objectively reasonable basis for seeking removal, their appeal is frivolous and has caused unnecessary delay and expense. Fed. R. App. Proc. 38.

STATEMENT OF THE CASE

A. Nature of the case

This is an appeal of the dismissal of an appeal of an order of remand in a state workers' compensation case. Respondent submits that the only issue for review is whether a remand order of a workers' compensation case, defectively removed from state court and over which the federal district court had no jurisdiction, is reviewable. Alternatively, and without waiving the foregoing, at issue is whether Petitioners properly removed this case from state court and whether the District Court had jurisdiction to hear this case.

Additionally, issues raised, but not briefed by Petitioners, are whether the Court of Appeals for the Fifth Circuit abused its discretion in granting Liberty Mutual its costs and damages and whether the District Court abused its discretion in granting Liberty Mutual statutory attorney's fees and in sanctioning the Petitioners.

B. Proceedings below

This case originated as a suit filed in state district court by Respondent Liberty Mutual for judicial review of an administrative decision of the Texas Workers' Compensation Commission Appeals Panel by which it was aggrieved with respect to the workers' compensation claim of Donna Adams. Adams answered and counterclaimed for bad faith and Hedrick intervened. The bad faith claim was severed and abated.

1. Ms. Adams' work related injuries and workers' compensation claims

Ms. Adams was employed by IBM as a technical support representative responsible for going to work sites and setting up computer systems. Ms. Adams filed two workers' compensation claims with the Texas Workers' Compensation Commission[1] (TWCC), the Texas agency charged with the responsibility of administering workers' compensation claims at the time, Tex. Lab. Code § 402.061, (R. 322): one for March 29, 2000 claiming to have suffered an asthma attack after inhaling dust at the jobsite that was still under construction and one for August 17, 2000, claiming another asthma attack as a result of the heat, which resulted in her hospitalization.[2]

---

1. By recent amendment effective September 1, 2005, the Texas Workers' Compensation Commission was abolished and supplanted by the Division of Workers' Compensation within the Texas Department of Insurance. Tex. Lab Code § 402.001. For purposes of this brief, this agency will be referred to as the TWCC.

2. During the pendency of these claims, Ms. Adams and Mr. Hedrick filed suit against the TWCC, hearing officer Kathleen Decker, Liberty Mutual, its counsel Tommy Smith, IBM, its chief executive officer at the time, Louis Gerstner and its employee Michael Clark (Cause No. H-01-3416). (R. 356) The case was dismissed for lack of jurisdiction by Judge Hoyt. (R.468-472) Ms. Adams and Mr. Hedrick (Cont'd)

Ms. Adams' workers' compensation claims proceeded and were heard in one contested case hearing. (Pet. App. G) Ms. Adams appeared at the contested case hearing and was represented by her husband, Mr. Hedrick.[3] (Pet. App. G) (R. 322) The hearing officer's findings and decision were affirmed by the Appeals Panel.[4] On August 21, 2003, Liberty Mutual filed a suit for judicial review of a portion of the hearing officer's decision to state court under Cause No. 25628 in Brazoria County, Texas, the county of residence of Ms. Adams pursuant to the Texas Labor Code. Tex. Lab. Code § 410.252(b)(1). (R.334-348) Ms. Adams did not appeal the TWCC finding that she did not sustain a compensable injury on August 17, 2000 and this finding became final. Tex. Lab. Code § 410.205. On September 26, 2003, she answered the lawsuit and filed a counterclaim for bad faith. (R.706)

(Cont'd)
appealed to the Court of Appeals for the Fifth Circuit under Case No. 02-20111 and the order of dismissal was affirmed because Ms. Adams failed to exhaust her administrative remedies.

3. Texas allows a non-attorney to represent a claimant before the TWCC. 28 Tex. Admin. Code § 150.3(a)(3).

4. "Judicial review is the concluding step of the Act's four-tier system for disposition of compensation issues. *In re Louisiana-Pacific Corp.*, 112 S.W.3d at 188; *see* Tex. Lab. Code Ann. §§ 410.021-410.034 (benefit review conference); Tex. Lab. Code Ann. §§ 410.104; 410.151-410.169 (arbitration or contested case hearing); Tex. Lab. Code Ann. §§ 410.201-410.208 (appeals panel review); Tex. Lab. Code Ann. §§ 410.251- 410.308 (judicial review). Each step is a prerequisite to the succeeding one. *See* Tex. Lab. Code Ann. §§ 410.024, 410.169, 410.205; *see also Ankrom v. Dallas Cowboys Football Club, Ltd.*, 900 S.W.2d 75, 78 (Tex. App.-Dallas 1995, *writ denied)* (Act provisions regarding successive steps in the progress and maturity of a claim are mandatory.)." *Cervantes v. Tyson Foods, Inc.*, 130 S.W.3d 152 (Tex. Civ. App.—El Paso 2003).

Ms. Adams also filed motions to allow her husband Mr. Hedrick to represent her. (R.566-575) Mr. Hedrick intervened in the lawsuit and made himself a party. (R.576-581) Liberty Mutual filed a motion to sever the bad faith claim and specially excepted to the pleadings seeking recognition of Mr. Hedrick as Ms. Adams' attorney for purposes of the litigation.

Liberty Mutual's motion for severance was set for hearing with proper notice to Petitioners. Ms. Adams and Mr. Hedrick failed to appear at the hearing on January 26, 2004. At the conclusion of the hearing held in open court, the motion for severance was granted and Petitioners' bad faith claims were severed from the main case into Cause No. 25628-1. (Pet. App. F) (R.350-353) Liberty Mutual's special exceptions have not yet been heard because they are part of the severed and abated case. (R.154)

2. Federal court litigation history

The removal actions filed by Ms. Adams and Mr. Hedrick in this case are:

	Federal Docket No.	Date Filed	State Cause Remanded	Date of Remand	Judge Presiding
1.	H-04-0954	3/10/04	No. 25628	10/22/04	Hon. Lee Rosenthal
2.	H-05-0987	3/23/05	No. 25628	5/6/05	Hon. Lynn Hughes
3.	H-05-1974	6/6/05	No. 25628-1	7/25/05	Hon. Kenneth Hoyt

Both prior removals were of the main case (Cause No. 25628), the appeal of the final decision of the Texas Workers' Compensation Commission Decision and Order. In the first removal action, no motion for statutory fees was filed, in the second action one was filed and denied.[5]

3. This lawsuit

This case involves removal of the abated and severed bad faith counterclaims of Petitioners who alleged that "This case became removable on May 24, 2005 upon the United States District Courts [sic] issuing its last order; Order Denying Liberty Mutual Insurance Company's Motion for Sanctions and Attorney Fees in removed case No. H-05-987." (R. 607) Further into the Notice of Removal, they alleged that they were removing

> . . . all **'bad faith actions' and violation of U.S.C. Title 18** (aka The United States Criminal Code) against LIBERTY MUTUAL INSURANCE COMPANY and their 'insured employer' International Business Machines contained in the 239th Judicial Court of Brazoria County, Case No. 25628-1 alleging civil and criminal wrongs not compensable under the Texas Workers' Compensation Act.

(R. 622-623) Petitioners attempted to assert numerous federal questions involving 18 U.S.C. §§ 24, 241, 242, 371, 1035, 1347, 1512, and 42 U.S.C. §§ 1981, 1983 and 1985, that have nothing to do with Liberty Mutual's suit for judicial review of a workers' compensation administrative ruling.

---

5. The motion was filed to put the *pro se* Petitioners on notice that Liberty Mutual could request such relief from, and as a deterrent to, their frivolous and repetitive removals.

As the bad faith claims were severed on January 26, 2004, Liberty Mutual filed its Motion to Remand based on defects in the statutory removal procedure: the May 24, 2005 Order denying attorney's fees did not create federal jurisdiction, Petitioners did not file their notice of removal within 30 days of the Order of Severance, but instead more than one year after the Order of Severance and the District Court lacked jurisdiction over a state workers' compensation case. (R 526-531)

Liberty Mutual's Motion to Remand was set for hearing with proper notice to Ms. Adams and Mr. Hedrick, but neither appeared at the hearing on July 25, 2005. (Pet. App. D) (R. 875) During the hearing, Judge Hoyt attempted to reach the Petitioners by phone. (Pet. App. D) (R. 1006) At the conclusion of the short hearing, Judge Hoyt granted the Liberty Mutual's Motion to Remand and Motion for Sanctions and Motion for Statutory Attorney's Fees and denied all the motions filed by Petitioners. (Pet. App. B) (R. 1009, 962-966 & 968) Petitioners appealed all orders to the Fifth Circuit.[6] The basis of their appeal was that (1) the state district court violated Ms. Adams constitutionally guaranteed right to be properly represented in court, (2) the District court violated Mr. Hedrick's constitutional right to represent his wife in court, (3) the District and state district courts violated Ms. Adams' right to access to court by failing to allow her spouse Mr. Hedrick

6. Order of Remand of July 25, 2005, the Order Granting Liberty Mutual's Motion for Sanctions and Motion for Statutory Attorney's Fees and the Order denying the numerous motions to compel joinder of Attorney General of United States, the United States Department of Justice, International Business Machines (IBM), Louis V. Gerstner (then acting CEO of IBM), Richard Rodgers, Ellen O'Brien, Bradley Koehl, Dr. Ponterio and Michael Clark, and Motion to Appoint Guardian, Motion to Disqualify Opposing Counsel, Motion to Strike All Documents Filed by Opposing Counsel, Motion to Stay and Motion for Continuance. (R. 977-978)

to represent her in court, (4) the District court denied Ms. Adams' right to access to court by failing to advise her prior to any hearings that access via telephone was approved, (5) the District court erred in ordering attorney fees and sanctions against Petitioners, and (6) the District court erred in remanding the case on the basis of lack of subject matter jurisdiction. Liberty Mutual filed a Motion to Dismiss the appeal as well as an Appellee's Brief. The Fifth Circuit granted Liberty Mutual's Motion to Dismiss and Motion for Costs and Damages, and denied all Petitioner's motions.[7]

On November 16, 2006, Petitioners filed their Petition for Writ of Certiorari with the Supreme Court. The inaccuracies contained in the rendition of the facts made by Petitioners and the petition's focus on a non-existent right of Hedrick, a layman, to represent Adams in a court of law required Liberty Mutual to file this Brief in Opposition. Petitioners filed their Petition for Writ of Certiorari asserting federal questions involving (1) whether the disabled Ms. Adams' right to due process was violated by failing to recognize the status of her spouse Mr. Hedrick to represent her in court, (2) whether the provisions of Tex. Lab. Code §§ 401.011(37) & 402.071 and 28 Tex. Admin. Code § 150.3(a)(3), allowing a claimant non-attorney representation at TWCC hearings, and the provision of the Tex. Gov't Code § 81.102(a), prohibiting non-attorney representation in state and federal courts violate the due process rights of Ms. Adams to be represented by her non-attorney spouse who represented her at the administrative hearing and who was most knowledgeable of the facts of the case, (3) whether the District Court and Court of Appeals for the Fifth Circuit abused their discretion in ordering sanctions and costs against

---

7. Petitioners' motion for $20,000 in sanctions, motion to turn the appeal over to the FBI for investigation of allegations of conspiracy between employees of the Court of Appeals and motion to continue all actions pending the outcome of that investigation.

Petitioners to "silence" attempts to challenge state laws and non-attorney representation, (4) whether the Court of Appeals for the Fifth Circuit erred in dismissing the appeal without addressing the disabled Ms. Adams' rights to due process, representation and protection of fair and equal access to the court, and (5) whether the District Court and the Court of Appeals for the Fifth Circuit unfairly issued sanctions and costs against Petitioners.

REASONS FOR DENYING THE PETITION

I. Appellate review of remand orders is barred by 28 U.S.C. § 1447(d).

Liberty Mutual's Motion to Remand, based on defects in the removal procedure and lack of jurisdiction, was heard and granted. Therefore, even if erroneous, this Court does not have jurisdiction to consider a review, by any method, of the Order of Remand. 28, U.S.C. § 1447(d); *Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 127-128 (1995); *Gravitt v. Southwestern Bell Telephone Co.*, 430 U.S. 723 (1977); *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149, 150-153 (1908) (plaintiff, not defendant, controls removability of case); *Kircher v. Putnam Funds Trust*, 546 U.S. __, 126 S. Ct. 2145, 2154 (2006).

Petitioners "appeal to the United States Court of Appeals for the 5th Circuit from the following orders of the United States District Court ... Order of Remand entered in this action on the 25th day of July, 2005." (R 977)

Courts of appeal lack jurisdiction to hear a direct appeal of an order of remand based on a defect in the removal procedure. 28 U.S.C.A. § 1447 (d); *Thermtron Products, Inc. v. Hermandsdorfer*, 423 U.S. 336, 346 (1976). Therefore, this appeal should be dismissed.

Even if erroneous, this Court does not have jurisdiction to consider a review, by any method, of the Order of Remand. "[R]eview is unavailable no matter how plain the legal error in ordering the remand.'" *Kircher v. Putnam Funds Trust*, 547 U.S. __, 126 S. Ct. 2145, 2154 (2006) (quoting *Briscoe v. Bell*, 432 U.S. 404, 414 n.13 (1977)). (Where a remand order is based on one of § 1447(c)'s grounds, review is unavailable no matter how plain the legal error in ordering the remand.)

A. Alternatively, without waiving the foregoing, Petitioners did not follow the proper procedure to remove this case.

1. Petitioners' Notice of Removal was untimely filed

In the alternative, without waiving the foregoing, Petitioners filed their Notice of Removal on June 6, 2005. (R. 8) Petitioners' Notice of Removal was untimely because they failed to file their Notice within thirty days of receipt of either the initial pleading or an amended pleading, motion, order or other paper from which the Petitioners may have first ascertained that this case was or had become removable as required by 28 U.S.C. § 1446(b). (R. 265-266).

Petitioners recited in their Notice of Appeal that this case became removable on May 24, 2005, the date Liberty Mutual's Motion for Sanctions and Attorney's Fees was denied by Judge Hughes in the second removal action of the main case, but failed to include a brief statement explaining the basis of how this order created federal jurisdiction.[8] 28 U.S.C. § 1446(a). (R. 10) Nothing in the

8. Petitioners did not attach a copy of the May 24, 2005 Order to their Notice of Removal, nor include it in their appendix. It appears in Respondent's Appendix as No. 3.

May 24th Order in the prior removal action of the main case, gave rise to a federal question for federal court jurisdiction. *See Willy v. Coastal Corp.*, 503 U.S. 131, 138 (1992). The May 24th Order was the only "pleading, motion, order or other paper" at the time of the June 6 Notice of Removal that was less than thirty days old and that Petitioners could allege to appear timely. 28 U.S.C. § 1446(b). Their statement that the case became removable on May 24, 2005, because of the May 24, 2005 Order Denying Motion for Sanctions and Attorney's Fees was a frivolous pleading to avoid the Section 1446(b)'s thirty day time limit. Such order has no bearing on whether the District Court had jurisdiction of the controversy removed in this case and in no way relates to any of the numerous statutes Petitioners allege present a federal question. (R. 10-21)

As another basis for removal to federal court, Petitioners included the January 26, 2004 state court Order of Severance and removed the "severed allegations of civil wrongs."[9] (Pet. App. F) (R 623). The January 26, 2004 state court Order of Severance and the Memorandum and Order of Judge Rosenthal in the first removal action were attached to Petitioners' Notice of Removal in the second removal action filed on March 23, 2005. (Pet. App. F,) (R.557-565) Clearly, Petitioners had notice of both orders on March 23, 2005. Therefore, from the record, March 23, 2005 is the latest date from which Petitioners could have received notice of and ascertained from those orders "that the case is one which is or has become removable". 28 U.S.C. § 1446(b). Assuming they could base removal on their own pleadings, to be timely, Petitioners must have filed their Notice of Removal by April 23, 2005. Their Notice of Removal was filed on June 6, 2005, more than thirty days after March 23.[10]

9. Petitioners used the January 26, 2004 as a ground for removal in their 2nd removal action.

10. In reality, Appellants had notice of these Orders much earlier, but verification of their receipt of them before March 23, 2005, is outside the record.

Not having filed their Notice of Removal within 30 days of the January 26, 2004 Order of Severance, or even 30 days from notice of the order, the Petitioners waived their right to do so. 28 U.S.C. § 1446(b); *Brown v. Demco, Inc.*, 792 F.2d 478, 481 (5th Cir. 1986). It was incumbent upon the Petitioners to show their removal was proper. *Willy v. Coastal Corp.*, 855 F.2d 1160, 1164 (5th Cir. 1988). In their Response to the Liberty Mutual's Motion to Remand, Petitioners failed to assert, or make any showing, that their removal was timely. (R. 881-897) No facts, argument or authority were asserted by Petitioners in response to Liberty Mutual's ground of procedural defects in the removal. (R. 881-897)

The Petitioner's Notice of Removal is untimely for the additional reason that the alleged facts made the basis of the Petitioners' third removal are represented by Petitioners as having taken place prior to the filing of Liberty Mutual's original state court action. They attached to their Notice of Removal the following exhibits dated prior to the filing of Liberty Mutual's original state court action in support of their factual allegations:

> Exhibit A dated October 2, 2000 (Durable Power of Attorney signed by Donna Adams appointing Robert Hedrick her attorney in fact) (R.42);
>
> Exhibit D dated October 10, 2000 –February 26, 2001 (Notes of E. O'Brien) (R. 60);
>
> Exhibit E dated February 2, 2001 (letter from IBM to OSHA), January 26, 2001 (letter from U.S. Dept. of Labor to IBM), May 30, 2001 (Letter from IBM to Robert Hedrick) (R.62);
>
> Exhibit F purportedly dated March 27, 2003 (Purported deposition of Michael Clark) (R.71);
>
> Exhibit G dated February 3, 2001 (Affidavit of Edith Knighten) (R.77);

Exhibit Q dated May 15, 2001 (Notice of Appraised Value) (R.90); and

Exhibit Z dated May 30, 2001 (Letter from Tommy Smith to Louis Gertner) (R.160).

Therefore, in September, 2003, when they filed their answer/ counterclaim in the state district court, Petitioners had already "ascertained" the existence of most of the facts they alleged gave rise to the claims asserted in their Notice of Removal.

2. Respondent's Motion for Remand was timely filed

Liberty Mutual timely filed its Motion to Remand on June 30, 2005 within thirty days of Petitioners' Notice. (R. 257) Liberty Mutual's Motion to Remand was based in part on procedural defects in the Appellants' removal of the case which included failure to timely remove, failure to state a ground upon which removal could be based, having the status of a plaintiff in the action sought to be removed, trying to remove an abated lawsuit, and basing removal on their own pleadings and not Liberty Mutual's original petition. (R. 265-269)

3. Petitioners' Notice of Removal based upon their own cause of action

Another basis of Liberty Mutual's Motion to Remand was the defect of Petitioners' Notice of Removal being based upon their own causes of action and not Liberty Mutual's original petition. (R. 267) "In cases removed to federal court, the plaintiff's well-pleaded complaint, not the removal petition, must establish that the case arises under federal law." *Id.* at 1165.

Liberty Mutual asserted that Petitioners were in fact the "plaintiffs" in the action they sought to remove and did not qualify as "a defendant" under 28 U.S.C.A. § 1446(a) to remove

their bad faith action. (R. 267) As the plaintiffs in their cause of action, they had the choice to file their action either in state court or District court when they filed their countersuit on September 26, 2003.

In *Certain Underwriters at Lloyd's v. Bristol-Myers Squibb Co.*, 51 F. Supp. 2d 756, 759 (E.D. Tex. 1999), the issue of whether the removing party was a defendant was addressed. The factors considered were whether the party's claims constitute the "mainspring of the proceedings" and whether the "the institution and continuance of the proceedings depend upon its will," citing *Mason City & Fort Dodge Railroad Co. v. Boynton*, 204 U.S. 570, 580, 27 S. Ct. 321 (1907). Though Ms. Adams was the designated defendant in the workers compensation case, she became a plaintiff when she sued Liberty Mutual for bad faith. Since the right to removal is limited to defendants, Ms. Adams, being a plaintiff in the severed bad faith action, could not remove her case to District Court. *Scott v. Communications Services, Inc.*, 762 F. Supp. 147, 150 (S.D. Tex. 1991), *aff'd*, 961 F.2d 1571 (5th Cir. 1992).

4. Petitioners attempted to remove abated state court case

Liberty Mutual also asserted that by virtue of the Order of Severance and Abatement, the Cause No. 25628-1 had been abated until the main case had been finally determined. (R.268, 350-353) The case having been abated, the Petitioners were prohibited from proceeding in any manner until the case had been revived. *Lumbermens Mut. Cas. Co. v. Garza*, 777 S.W.2d 198, 199 (Tex. Civ. App.—Corpus Christi 1989).

B. Lack of jurisdiction

Liberty Mutual's Original Petition was based upon a workers' compensation claim filed by Ms. Adams over which federal courts have no jurisdiction. 28 U.S.C. § 1445(c); *Blackmore v. Rock-Tenn Co.*, 756 F. Supp. 288, 289 (N.D. Tex.

1991). Adams was attempting to refile the abated state court bad faith counterclaim in District Court. Liberty Mutual's Original Petition controls whether this action was removable to federal court. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392, 107 S. Ct. 2425, 2429, 96 L. Ed. 2d 318 (1987). Liberty Mutual did not allege a federal question on the face of its Original Petition to which federal jurisdiction could attach. *Gully v. National Bank*, 29 U.S. 109, 111-113, 57 S. Ct. 96, 97, 81 L. Ed. 70 (1936). The federal question issues alleged by Adams (complaint with the trial court's Order Granting Severance and Abatement of January 26, 2004, her spouse's right to act as an attorney for her in a court of law and her request to have him appointed guardian and/or guardian ad litem over and/or for his wife) do not grow out of the same fact situation or controversy made the basis of the original suit and do not confer subject matter jurisdiction to this federal court. *Id.*, *Baron v. Strassner*, 7 F. Supp. 871, 873 (S.D. Houston 1998).

Petitioners have and are by their Petition "challenging the actions, lack of actions and orders of the ... 239th Judicial District Court of Texas as being unconstitutional ..."[11] Even if Judge Hughes May 24, 2005 Order and Judge Sebestra's January 26, 2004 Order of Severance were final judgments, the District Court lacked jurisdiction to "review and reverse unfavorable state-court judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 283-284, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005).

The Petitioners added a personal injury action arising out of the alleged on-the-job injury of August 17, 2000. Ms. Adams' claim for benefits arising out of the August 17, 2000 occurrence was presented to and considered by the TWCC. (R.322) The hearing officer held that Ms. Adams did not sustain a compensable injury on August 17, 2000. (R. 328) Ms. Adams did not file an appeal of this issue. Therefore, the finding that

---

11. Petition for Writ of Certiorari, Page 3.

Ms. Adams did not sustain a compensable injury on August 17, 2000 is a final determination of that issue. Tex. Lab. Code § 410.169, *ESIS, Inc., Servicing Contractor v. Johnson*, 908 S.W.2d 554, 562-563 (Tex. Civ. App.—Fort Worth 1995). Ms. Adams' exclusive remedy against her employer and its workers' compensation carrier for the August 17, 2000 occurrence was the recovery of workers' compensation benefits. Tex. Lab. Code § 405.001(a). She is precluded from bringing a personal injury action against Liberty Mutual or its insured based upon the August 17, 2000 occurrence. Tex. Lab. Code § 405.001(a), *Simpson v. State*, 998 S.W.2d 304, 306 (Tex. Civ. App.—Austin 1999).

II. There was no abuse of discretion in awarding or affirming the award of statutory attorney's fees to Liberty Mutual the prevailing party in a removal action and sanctioning the Petitioners because such an award is authorized by 28 U.S.C. § 1447(c) when there is no objectively reasonable basis for seeking removal and Petitioners violated Rule 11 of the Federal Rules of Civil Procedure.

A. Attorney's fees

An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. 28 U.S.C.A. § 1447(c). The District Court is empowered to award reasonable attorney's fees to successful litigants seeking remand of cases to state court. *Id.*, Fed. R. Civ. Proc. 54(d)(2). By filing its Motion to Remand, Motion to Dismiss Pursuant to Rule 12(b), Motion to Dismiss for Lack of Subject Matter Jurisdiction and Plea to the Jurisdiction on June 30, 2005, within thirty (30) days of receiving on June 9, 2005, Petitioner's June 6, 2005 Notice of Removal, and by being the prevailing party in such removal action, LIBERTY MUTUAL qualified for an award of statutory attorney's fees. 28 U.S.C. § 1447(c). By filing its Motion for

Sanctions and Statutory Attorney's Fees with a supporting affidavit from the undersigned attorney contemporaneously with its motion to dismiss and remand, Liberty Mutual met its burden to show there is no objectively reasonable basis for the Petitioners' third removal and the unusual circumstances present in this case. *Martin v. Franklin Capital Corporation*, 546 U.S. 132, 126 S. Ct. 704, 711 (2005).

Liberty Mutual's Motion for Sanctions and Statutory Attorney's Fees set out the repetitive removal actions that effectively delayed the state court case for almost three years from the notice of the first removal on March 4, 2004. Petitioners alleged in their June 6, 2005 (3rd) Notice of Removal that the case became removable when on May 24, 2005, an Order was signed by Judge Hughes denying Liberty Mutual's Motion for Sanctions and Statutory Attorney's Fees. Considering the circumstances and facts of this case as set out and argued above, there is no objectively reasonable basis for Petitioners to assert that Liberty Mutual's cause of action involved a federal question requiring federal jurisdiction as a result of an order denying a statutory attorney's fee request for fees in a prior removal action between the same parties. Petitioners did not proffer any non-frivolous argument or authority on this point in either the District Court, the Court of Appeals or this Court. There was no basis, either in law or fact, upon which Petitioners could have prevailed on any of their claims. The District Court found that the June 6, 2005 removal was in bad faith and without substantial justification.

As set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-719 (5th Cir. 1974), the guidelines for awarding attorney's fees are:

1. Time and labor required;
2. The novelty and difficulty of the questions;
3. The skill requisite to perform the legal service properly;

4. The preclusion of other employment by the attorney due to acceptance of the case;
5. The customary fee;
6. Whether the fee is fixed or contingent;
7. Time limitations imposed by the client or the circumstances;
8. The amount involved and the results obtained;
9. The experience, reputation, and ability of the attorneys;
10. The "undesirability" of the case;
11. The nature and length of the professional relationship with the client; and
12. Awards in similar cases. *Johnson*, 488 F.2d at 717-719.

The Order granting the statutory attorney's fees states on its face that the Court considered the guidelines set forth in *Johnson*, 488 F.2d at 717-719, and that according to such guidelines, the amount of the fee requested by Liberty Mutual was reasonable and necessary. (Pet. App. B)

Petitioners have not put forth any argument or authority to claim that the District Court erred in awarding Liberty Mutual its statutory attorney's fees. Therefore, the Court of Appeals for the Fifth Circuit did not abuse its discretion in affirming the award of $10,750.00 in attorney's fees.

B. Sanctions

The District Court did not abuse its discretion in sanctioning Adams and Hedrick with monetary and non-monetary sanctions because Adams' and Hedrick's conduct during the course of this case violated Rule 11 of the Federal Rules of Civil Procedure. The correct standard of review of a district court's order under Rule 11 is abuse of discretion. *Cooter & Gell v.*

Hartmarx Corp., 496 U.S. 384, 405 (1990). The central purpose of Rule 11 is to deter baseless filings[12] in district court and thus, consistent with Rule Enabling Act's grant of authority, streamline administration and procedure of federal courts. *Id.* at 393.

> 'Determining whether an attorney has violated Rule 11 involves a consideration of three types of issues. The court must consider factual questions regarding the nature of the attorney's prefiling inquiry and the factual basis of the pleading or other paper. Legal issues are raised in considering whether a pleading is "warranted by existing law or a good faith argument" for changing the law and whether the attorney's conduct violated Rule 11. Finally, the district court must exercise its discretion to tailor an "appropriate sanction."' *Id.* at 399.

By affirming the sanctions orders against Petitioners on the basis that there was no abuse of discretion, the appellate court applied the correct standard of review. *Id.* at 405.

> "[I]t is well established that a federal court may consider collateral issues after an action is no longer pending. . . . [An] imposition of a Rule 11 sanction is not a judgment on the merits of an action. Rather, it requires the determination of a collateral issue: whether the attorney has abused the judicial process, and if so, what sanction would be appropriate." *Id.*, at 395-396, 110 S. Ct., at 2456. Such an order implicates no constitutional concern because it "does not signify a district court's assessment of the legal merits of the

12. Petitioners object to the order of monetary and non-monetary sanctions on the grounds that they are attempts to "silence the constitutional issues of the case" and unfair. (Petition for Writ of Certiorari, p. 22)

complaint." *Id.*, at 396, 110 S.Ct., at 2456. It therefore does not raise the issue of a district court adjudicating the merits of a "case or controversy" over which it lacks jurisdiction. *Willy v. Coastal Corp.*, 503 U.S. 131, 137-138 (1992).

1. Non-monetary sanctions

As argued before, the Petitioners' three removal actions were groundless and for delay purposes. (R. 261-264) Petitioners failed to controvert the factual allegations in Liberty Mutual's Motion to Remand (R.258-264, 881-888) Petitioners' modus operandi is to remove to federal court, file pleadings alleging conspiracy, fraud and criminal violations, request rulings without hearings, move to disqualify opposing counsel and the judge, move to strike opposing pleadings, request a stay, fail to appear at hearings and file a notice of removal alleging Ms. Adams' constitutional rights have been violated. (R. 115-120, 132-135, 136 – 141, 513-524, 540-550, 566-574, 876-880) The legal basis of their removal, based upon the May 24, 2005 Order Denying Liberty Mutual Insurance Company's Motion for Sanctions and Attorney Fees, was groundless and in bad faith. The District Court's power to decide a collateral issue of attorney's fees did not create federal question jurisdiction over Liberty Mutual's suit for judicial review. *Willy v. Coastal Corp.*, 503 U.S. at 137-138. The common denominator in all of the Petitioners' filings is a complaint of the violation of their due process with no attempt to avail themselves of the procedure in place to prevent the very same due process violation of which they complain. *Galloway v. Louisiana*, 817 F.2d 1154, 1158 (5th Cir. 1987) ("An employee cannot ignore the process duly extended to him and later complain that he was not accorded due process.").

Applying the test set forth in *Cooter & Gell*, 496 U.S. at 399, it was not an abuse of discretion for the District Court to sanction the Petitioners with monetary and non-monetary sanctions. The sanction was appropriately tailored to prevent the continued filings of groundless removal actions whose

factual contentions are clearly baseless. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 51 (1991).

By signing the June 6, 2005 Notice of Removal, Petitioners certified that to the best of their knowledge, information and belief, formed after inquiry reasonable under the circumstances, that the claims and legal contentions of federal jurisdiction made in their Notice of Removal were warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. Fed. R. Civ. P. 11(b)(2).

As evidenced by a comparison of the three Notices of Removal filed by Petitioners (R. 513-524, 540-550 & 605-640), the allegations are the same – violation of Ms. Adams' right to due process by not allowing her non-attorney husband to represent her and federal question based upon the state court's granting the severance of the bad faith case – but each with a new twist. The twist has ranged from allegations of not being provided with proper representation as an alternative to recognizing her husband as her attorney to allegations of conspiracy and violations of numerous federal criminal statutes that have no basis in fact or law. After two attempts to remove on basically the same grounds and two remands, it is inconceivable that the Petitioners thought that their claims in the third Notice of Removal were warranted by existing law or a non-frivolous argument.

Further, as evidenced by a comparison of the three Notices of Removal, the facts and events made the basis of this 3^{d} removal were known to them at the time of the 1st removal. Therefore, their statement of jurisdiction based upon the May 24, 2005 Order denying sanctions is merely an attempt to plead around the untimely filing of this removal attempt. Clearly, the federal question issues and the pleading, order or paper, that they complain of (if indeed they have a legitimate complaint) is the Order of Severance and Petitioners' erroneous assertion that Hedrick, a non-attorney, may represent his wife in court.

Pro se litigants have the duty to investigate the factual basis of their lawsuit and are subject to the sanctions of Rule 11 for failure to do so. ***Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.***, 498 U.S. 533, 545-546, 564 (1991).

In determining whether Petitioners made reasonable inquiry into the law governing this case, the Court may be guided by *Thomas v. Capital Security Services, Inc.* 836 F.2d 866, 875-876 (5th Cir. 1988). Factors enumerated in *Thomas* include:

(1) time available to prepare the pleading

(2) plausibility of the legal argument

(3) *pro se* status of the litigant

(4) complexity of the legal and factual issues raised in the case. *Thomas* at 875-876.

LIBERTY MUTUAL asserted that (1) as there was no deadline to meet, sufficient time was available to Petitioners to prepare their pleading; (2) their legal arguments lacked any plausibility; (3) the *pro se* status of Petitioners had already been granted accommodation since they had been involved in three prior federal court proceedings and one appellate proceeding involving this workers' compensation case involving the similar issues and legal arguments on Mr. Hedrick's non-existent right to represent his wife; (4) the complexity of this case was average until the Petitioners began their course of action of removing this case to federal court; and (5) as shown above, Petitioners were prohibited from re-litigating the alleged August 17, 2000 on the job injury.

A sanction must be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Fed. R. Civ. P. 11(c)(2). The sanction prohibiting Petitioners from filing any further pleadings in federal court on this litigation is specific to this case alone, does

not abridge Petitioners' right to file anything that is meritorious and non-frivolous and protects Liberty Mutual from having to defend against the Petitioners' frivolous actions.

2. Monetary sanctions.

It was not an abuse of discretion for the District Court to grant monetary sanctions because of the repeated removal actions. No request for fees was made in the first removal. The fee request for the second removal was denied. After the second removal, Petitioners could not argue, and have not argued, that they were unaware of the possibility that they could be ordered to pay Liberty Mutual's attorney's fees. Had Petitioners stopped after the second removal, they would not have been sanctioned.

Petitioners' claims fall into the category described by Justice Marshall in *Neitzke v. Williams* as "fantastic or delusional scenarios".[13] *Neitzke v. Williams*, 490 U.S. 319, 328, 109 S. Ct. 1827, 1833 (1989). But for Petitioners' course of conduct, Liberty Mutual would not have incurred additional attorney's fees to defend against the frivolous removal of this case to federal court. Petitioner's pleadings were a work in progress, adding a new allegation or changing an approach to the same issue, requiring close review to avoid overlooking a hidden issue. Petitioners' pleadings, the Affidavit of Mary Markantonis (R. 314) filed with the District Court and the July 25, 2006 Order (R. 962-966) substantiate this point.

---

13. Petitioners alleged numerous criminal violations including 18 U.S.C. §§ 241, 242, 371 & 1512 (R. 13-22) Petitioners alleged a conspiracy between Liberty Mutual's former attorney, Liberty Mutual and IBM "to violate civil rights and Title 18." (R. 853, 868) Petitioners sought to disqualify the undersigned counsel because she was employed by the same law firm as the former attorney. (R. 867) Petitioners alleged a conspiracy between the undersigned attorney and the Fifth Circuit court employees because Liberty Mutual's request for extension of time to file brief was addressed to a specific employee in the clerk's office instead of the court's clerk.

III. The Court of Appeals for the Fifth Circuit did not abuse its discretion in awarding Liberty Mutual costs and damages for attorney's fees because the Petitioners lacked an objectively reasonable basis for seeking removal and their appeal was frivolous and caused unnecessary delay and expense. Fed. R. App. Proc. 38.

A. Lack of objectively reasonable basis

Liberty Mutual incorporates all its argument and authority set forth in Sections I. and II. above regarding lack of jurisdiction, defect in the removal process and frivolous nature of this appeal in support of its assertion that there was no objectively reasonable basis for Petitioners to file the third Notice of Removal in this case. Petitioners' claims (legal representation by non-attorney husband, violations of criminal statutes, personal injuries for on the job injury found to be not compensable) are legally frivolous because Liberty Mutual is immune from the claims asserted by Petitioners. Tex. Lab. Code § 405.001(a); *Neitzke*, 490 U.S. at 327.

B. Petitioners' appeal was frivolous.

As this was a workers' compensation case, Petitioner's prior two attempts at removal had failed and federal statute provides that review of an order of remand is barred, Petitioner's appeal of the third Order of Remand was frivolous because it had no basis in fact or in law. 28 U.S.C. §§ 1445(c) & 1447(d). "[A] finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them." *Denton v. Hernandez*, 504 U.S. 25, 33, 112 S. Ct. 1728, 1733 (1992). (R. 525-531 & 595) Petitioners' Notice of Removal described claims arising out of fantastic or delusional scenarios and therefore were frivolous. *Neitzke*, 490 U.S. at 327. (R. 10-24)

CONCLUSION

Respondent respectfully submits that, for the reasons set forth above, this Court has no jurisdiction to review this case on the merits or the issues presented by Petitioners and that the Court should affirm the Court of Appeals' Orders denying Petitioner's motions and granting Respondent costs and damages so that the case may return to the District Court for determination of that amount.

Respectfully submitted,

MARY M. MARKANTONIS
DEAN G. PAPPAS & ASSOC., P.C.
10375 Richmond, Suite 1670
Houston, Texas 77042
(713) 914-6200

Attorneys for Respondent